UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

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In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

Tele/Video Proceedings

300 Quarropas Street, Room 248

White Plains, NY 10601

September 13, 2021

10:13 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: ART

HEARING re Notice of Agenda / Agenda for September 13, 2021 Hearing (ECF #3750)

HEARING re Motion to Shorten Time / The Ad Hoc Group of Individual Victims' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to the Motion of the Ad Hoc Group of Individual Victims for Entry of a HIPAA-Qualified Protective Order (related document(s)3486) filed by J. Christopher Shore on behalf of Ad Hoc Group of Individual Victims of Pharma L.P. (ECF #3487)

HEARING re Daniel L. Carpenter Late Claim Motion / Motion to File Proof of Claim After Claims Bar Date (ECF #3526)

HEARING re Application for Final Professional Compensation for The Examiner, Other Professional, period: 6/24/2021 to 7/19/2021, fee:$197,423.16, expenses: $2,576.84 (ECF #3753)

HEARING re Motion to Authorize I Debtors Motion Pursuant to 11 U.S.C. 105(a) and 363(b) for Entry of an Order (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master Disbursement Trust and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other Related Relief (ECF #3484)

HEARING re Objection to Motion for Entry of an Order Shortening Notice With Respect to the Debtors Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Entry of an Order (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master 1 Disbursement Trust, and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other Related Relief (related document(s)3485) filed by Brian Edmunds on behalf of State Of Maryland. (ECF #3493)

HEARING re Objection to Motion /Objection of the United States Trustee to Debtors Ex Parte Motion for Entry of an Order Shortening Notice with Respect to the Debtors Motion Pursuant to 11 U.S.C. 105(a) and 363(b) for Entry of an Order (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master Disbursement Trust and TopCo, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other Related Relief (related document(s)3484, 3485)(ECF #3555)

HEARING re Objection Joinder of Canadian Municipality Creditors and Canadian First Nations to the Objecting States and Office of the U.S. Trustee Objection to Debtors' Motion Pursuant to 11 U.S.C. Sections 105(A) and 363(B) for Entry of An Order (I) Authorizing The Debtors to Fund

Establishment of the Creditor Trusts, The Master Disbursement Trust and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information (related document(s)3555, 3493) filed by Allen J. Underwood on behalf of Certain Canadian Municipality Creditors and Canadian First Nation Creditors. (ECF #2463)

HEARING re Reply to Motion/ Debtors Reply to the Objections of the Objecting States, the United States Trustee, and the Canadian Municipality Creditors and Canadian First Nations Creditors to the Debtors Motion Pursuant to 11 U.S.C. §§ 105(A) and 363(B) for Entry of an Order (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master Disbursement Trust and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other Related Relief (related document(s)3484) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #3743)

HEARING re Debtors' KEIP/KERP Motion, Solely Respect to the 2021 KEIP - Motion of Debtors for Entry of an Order Authorizing Implementation of 2021 Key Employee Incentive Plan and 2021 Key Employee Retention Plan filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #3077)

HEARING re Objection to Motion of Debtors for Entry of an Order Authorizing Implementation of 2021 Key Employee Incentive Plan and 2021 Key Employee Retention Plan (related document(s)3077) filed by Paul Kenan Schwartzberg on behalf of United States Trustee (ECF #3137)

HEARING re Objection to Motion/ THE NON-CONSENTING STATES' OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING IMPLEMENTATION OF 2021 KEY EMPLOYEE INCENTIVE PLAN AND 2021 KEY EMPLOYEE RETENTION PLAN (related document(s)3077) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States.(ECF #3320)

HEARING re Objection to Motion of Debtors for Entry of an Order Authorizing Implementation of 2021 Key Employee Incentive Plan filed by Matthew J. Gold on behalf of State of Washington. (ECF #3624)

HEARING re Objection to Motion/ The Non-Consenting States' Limited Objection to Motion of Debtors for Entry of an Order Authorizing Implementation of 2021 Key Employee Incentive Plan (related document(s)3077) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States. (ECF #5625) Reply to Motion / Debtors' Omnibus Reply in Support of Motion of Debtors for Entry of an order Authorizing

Implementation of 2021 Key Employee Incentive Plan arid 2021 Key Employee Retention Plan (related document(s)3077) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #3334)

HEARING re Reply to Motion / Debtors Supplemental Omnibus Reply in Support of Motion of Debtors for Entry of an Order Authorizing Implementation of 2021 Key Employee Incentive Plan and 2021 Key Employee Retention Plan (related document(s)3077) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #3744)
Ellen Isaacs's Request for Immediate Injunction and Due Process. Request for Immediate Injunction and Hearing for Due Process, Production for Evidentiary Documents & Other Relief (ECF #3582)

Objection to Motion/ Debtors Objection to Ellen Isaacs Emergency Request for Immediate Injunction and Hearing for Due Process, Production for Evidentiary Documents & Other Relief (related document(s)3582) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #3734)

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JONATHAN LOWNE (TELEPHONICALLY)

ALSO PRESENT TELEPHONICALLY:
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ANNE ANDREWS
MICHAEL ATINSON
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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain and we are here in In re Purdue Pharma L.P. et al. I have the proposed agenda for today's hearing, and I'm happy to go down that agenda in order unless someone believes they need to make an introductory remark on something else.

MR. HUEBNER: Your Honor, nothing from this end. Good morning. For the record, Marshall Huebner. That was exactly our vision. We have three uncontested matters and three contested matters. And I guess we will just go down the order, which is what I was going to recommend.

The first motion is actually going to be presented by White & Case. That is the Ad Hoc Group of Individual Victims' Protective Order Motion. So with the Court's permission, I will turn the virtual podium over to them on behalf of the personal injury claimants.

THE COURT: Okay, that's fine. Thank you.

MR. SHORE: Good morning, Your Honor. Chris Shore from White & Case.

THE COURT: Good morning.

MR. SHORE: Does Your Honor have any questions?

THE COURT: I have reviewed the motion and I think it's clear as to its purpose, which is to authorize the initial work to be done on behalf of the PI trust pending the effective date of the plan. And tied into that is,

subject to the terms of the protective order and this order, the access of certain people who will be working on behalf of the trust to information that constitutes, “protected health information” under 45 CFR § 160.103.

So this appears to me to be reasonable relief under the circumstances. One of the goals of the Ad Hoc Group of Individual Victims and other personal injury claimants is to expedite the treatment of their claims and distributions on allowed claims from the trust to be set up under the plan, and a considerable amount of work needs to be done to facilitate that. So it seems clear to me.

I don’t know if you have anything more to say on it, Mr. Shore, or are you going to rely on the motion?

MR. SHORE: I will rely on the motion, and I will when we get to the contested matter address the issue of the importance, if it’s necessary to do so, the importance of getting this process started so that when we get to an effective date, we could be up and running with the trust.

THE COURT: Okay. So I understand that the motion is unopposed. It was originally sought on an expedited basis when it was filed, but that was on August 6th. Now it’s September 13th. There’s been plenty of time for regular notice of the motion. And given that time, there are no objections to it. So unless anyone has anything further to say on it, I will grant the motion.

MR. SHORE: Thank you, Your Honor.

THE COURT: Okay. Hearing no one, I will grant the motion. Mr. Shore, you can email the order to chambers.

MR. SHORE: We'll do that.

THE COURT: Okay.

MR. SHORE: Thank you, Your Honor.

Your Honor, the second motion is a motion by Daniel Carpenter that will be handled by Ms. Kathryn Benedict of Davis Polk.

THE COURT: Okay.

MS. BENEDICT: Good morning, Your Honor. For the record, Kathryn Benedict of Davis Polk & Wardwell LLP on behalf of the debtors. Can you hear me clearly?

THE COURT: Yes, I can hear you and see you fine. Thanks.

MS. BENEDICT: Thank you. Mr. Carpenter's late claim motion is at Docket Number 3526. Based on the individualized assertions in Mr. Carpenter's motion, the Debtors believe there is a colorable basis for granting Mr. Carpenter's request.

In addition, the Debtors consulted with the Creditors' Committee and the Ad Hoc Group of Individual Victims regarding the individualized circumstances surrounding Mr. Carpenter's request, and each has consented to the relief requested.

Accordingly, the Debtor's request that the proposed order submitted at Docket Number 3733 be entered. I am happy to answer any questions Your Honor may have.

THE COURT: Okay. I don't have any questions. I have reviewed Mr. Carpenter's motion. Let me just ask, does anyone have anything further to say on his motion? Okay.

I will grant the motion. I agree with the Debtor's decision not to oppose it. Mr. Carpenter's motion lays out clearly that having contracted COVID and having been incarcerated during most of the COVID period as a result without access to information regarding the bar date, he has shown excusable neglect for purposes of Bankruptcy Rule 9006 in the Supreme Court's Pioneer case.

So you can email the proposed order to chambers and it will be entered shortly.

MS. BENEDICT: Thank you, Your Honor. With that, I'll turn over the podium to Mr. Lerner at Squire Patton Boggs.

THE COURT: Okay.

MR. LERNER: Good morning, Your Honor. Stephen Lerner of Squire Patton Boggs. Can you hear me okay?

THE COURT: Yes. I can hear you and see you fine. Thanks.

MR. LERNER: Thank you, Your Honor. We, as you know, obviously I served as an examiner in the case for

roughly three to four weeks. We filed our fee application consistent with the order approving my appointment, limiting the fees to the $200,000 amount. And we have received no objections and response of any kind and filed a certificate to that effect on Friday. And unless the Court has specific questions of me, I'll stand on the application.

THE COURT: Okay. I don't have any questions. I have reviewed the application, including the time and expense records. Obviously there was a lot of work done in a short period, and the time here is reasonable. Indeed, you're taking somewhat of a discount because of the cap that I placed on the fees.

So I will grant the application. I believe you or someone from your firm already emailed the proposed order and schedules A and B to chambers. So those will be entered shortly.

MR. LERNER: Thank you, Your Honor.

THE COURT: And I want to thank you for undertaking this task and completing it within the timeframe set.

MR. LERNER: Thank you, Your Honor.

MR. HUEBNER: Your Honor, I think that brings us to the contested part of the hearing. The first motion I will turn the podium over to Mr. Vonnegut.

MR. VONNEGUT: Thank you. Good morning, Your

Honor. For the record, Eli Vonnegut of Davis Polk & Wardwell on behalf of the Debtors. Can you hear me, Your Honor?

THE COURT: Yes, I can hear you fine. Thanks.

MR. VONNEGUT: Thank you. I will be brief on the Trust Authorization Motion, Your Honor, because I think our papers mostly speak for themselves. But I believe some basic (indiscernible) will be helpful.

The plan has a lot of infrastructure in it that needs to be established in order to reconcile all of the claims and actually get money out the door and into the hands of personal injury claimants and the abatement initiative (indiscernible) that the plan distributes (indiscernible) funds. There is a network of five abatement trusts, the PI Trust, which has sub-comments for NAS and non-NAS personal injury claims, as well as the Master Disbursement Trust and Topco, which will both help direct distributions to all of these different trusts.

I think the most salient example is the Personal Injury Trust, which before it's going to be able to get distributions out to claimants will need to establish a claims database, a web portal, online forms, and test all of that to make sure that it works so that the PI Trust will be able to reconcile approximately 140,000 filed claims as it's required to do under the plan.

So in other words, this isn't a simple case in which emergence comes, we press a button, we send a couple wires and we call it a day. There's a lot more work necessary to actually get money into the hands of creditors.

If we waited until emergency to do all of that work, the trusts would receive their distributions on the effective date of the plan, but then they would have to sit on the cash for several months while they built the infrastructure necessary to process the claims and get distributions out.

And so knowing that we would have at least a couple of months of lag time between confirmation and emergency for regulatory processes and the DOJ settlement, several months ago the Ad Hoc Group of Individual Victims reached out to us and suggested that an advanced distribution to the PI trust following confirmation would help reduce that lag time and enable the trust to be much more ready on the emergency date to start actually sending money out.

That struck the Debtor as a great idea. We thought other creditor groups might likewise appreciate having a bit of lead time in order to get their legal vehicles ready. So we coordinated with all of our creditors, compiled proposed budgets. That's what led to the comprehensive proposal reflected in the motion.

We got a limited number of objections filed by a subset of the states that are still opposing the plan, Maryland, Connecticut, Oregon, and Washington, as well as the U.S. Trustee. And then a very brief joinder filed by the Canadian municipal claimants.

All of the objectors effectively have variations on the theme that they believe these payments are in one way or another really an effort to equitably move appeals of the confirmation of the plan before we've actually been able to emerge. So I just want to address those concerns briefly.

The total amount that we are seeking authority to spend under this motion is $6.855 million. None of those funds are going to creditors. It's all just being used to build plan infrastructure. None of the money is coming from the Sacklers. This is all estate cash on hand.

I think a helpful reference point in terms of size here is that the estate has spent an average of $8.7 million per month to date on creditor professional fees. We, frankly, don't really view these expenditures as any different, and we think it would be ridiculous for us to argue that these payments would somehow moot appeals of confirmation of a plan and a settlement before the plan and the settlement before the plan and the settlement are consummated.

We didn't hear from the objectors before they

filed their pleadings. But as soon as we saw them, we reached out to make very clear to them that we were not attempting to moot appeals, that we were not trying to treat consummation of the plan as a foregone conclusion, and offered to stipulate on the point to try to resolve the objection.

The concern that we heard in response was, well, what about the Sacklers? What about other creditors? How do I know that they won't make these arguments? That's a fair point. So we reached out to every organized creditor group that we have and we confirmed that they all agree with the Debtors, that these payments pre-emergence would not have the effect of mooting appeals during the pre-emergence window.

So we took that back to the objectors, and we've heard two different things in response. One is a concern that even if we, the Debtors, and all the creditors agree to this language in the order, that some other parties might not be bound by it or that an appellate court might conclude sua sponte that somehow these payments do moot appeals of the plan.

The four states that are objecting suggested that the stipulation that these payments wouldn't equitably moot appeals of confirmation doesn't go far enough, but that instead we and all the creditors should stipulate that full

consummation of the plan and the settlement also would not moot appeals. So we took that suggestion to the creditors. We discussed it with them. We all just don't think that's correct substantively. We don't think it's right to hold up this motion over an unrelated issue. And the suggestions that were made as to how the settlement and the plan might be adjusted to make that work we just didn't think were practical.

So where that leaves us, Your Honor, is the Debtors and the overwhelming majority of all of the creditors in the case are just trying to do what we think is a good and simple thing; we are trying to get creditors their money faster. We think that we've addressed all of the objectors' concerns, and we don't think that asking creditors to accept more delay over a theoretical concern that somebody might make an argument that we all think is crazy is the right way to be arranging our priorities in this case.

I continue to believe that the creditors' preferences are much more important than the Debtor's preferences in this case, and I know they feel very strongly about this. But if it's okay with Your Honor, how we would propose to proceed is to ask the objectors to speak for themselves as to what their remaining concerns are. And then I know Mr. Preis would like to address this matter, as

well as Mr. Eckstein and potentially others.

THE COURT: Okay.

MR. VONNEGUT: Thank you, Your Honor.

MR. HIGGINS: Your Honor, Ben Higgins for the U.S. Trustee. I can start for the objecting side if that's acceptable to Your Honor.

THE COURT: Okay.

MR. HIGGINS: Thank you, Your Honor. I agree with Mr. Vonnegut that we are concerned with preserving the status quo so that there can be an appellate review of the merits of the Court's decision approving the plan.

And to be clear, we do appreciate the efforts of the Debtors to craft language providing that the proposed funding won't support an equitable mootness argument. And we also appreciate the reference to get a consent among the various parties for this principle. But we don't know for certain that such an order would be binding on an appellate court or binding on all the parties to this case.

And there is ample caselaw in the Second Circuit that shows that an appellant that does not diligently attempt to preserve the status quo runs the risk of having its appeal dismissed as equitably moot. And just to illustrate that concern, at the last hearing on the KERP motion back in July, Your Honor referenced a recent district court decision in Harrington v. LSC Communications. And in

that case, the debtor appellees argue that bonus payments to six officer which totaled less than a million dollars rendered the U.S. Trustee's appeal as equitably moot because the payments constituted a change in circumstances.

And now the district court ruled in the U.S. Trustee's favor on that point and decided that we could reach the merits, but the district court didn't say the appellee's argument was frivolous or crazy, as Mr. Vonnegut suggests, and it did warn that an appellant's failure to obtain a stay in the context of plan confirmation would be dire. And the purpose of the current motion is to perform work necessary to implement the plan. And we are highly concerned, and I think justifiably so based on Second Circuit law, that any steps taken to implement the plan could constitute grounds for an appellate court to dismiss an appeal as equitably moot.

And to be clear, we do intend to move expeditiously with any appellate practice. And the question of the stay of the confirmation order is not yet before the Court, but we are also concerned about whether there are actions that the Debtors could undertake even before the effective date under the Confirmation Order or the Restructuring Steps Memorandum that could have the effect of scrambling the eggs or ringing the bell that can't be unrung, or choose whatever metaphor you want, Your Honor.

But the Second Circuit law was clear that if we just sit on our hands, we allow comprehensive change in circumstances to take place, then we do run the risk that an appellate court will never hear the merits of an appeal.

And it's also worth noting that the Debtors have bound themselves under the shareholder agreement at Section 2.09 to oppose any request for a stay pending appeal. And if no stay is granted and the plan is consummated, or even if before consummation there are sufficient changes in circumstances, there is a real danger that an appeals court will never reach the merits.

And from our perspective, that is a problem. And frankly, regardless of the outcome of an appeal on this case, we believe the integrity of the bankruptcy system is best served by an appeals court deciding that appeal on the merits.

And so we would request that just hold this motion in abeyance pending the outcome of (indiscernible).

THE COURT: Okay.

MR. HIGGINS: Thank you.

MR. GOLD: Good morning, Your Honor. Matthew Gold, Kleinberg, Kaplan, Wolff & Cohen for the State of Washington. Can you hear me, Your Honor?

THE COURT: Yes. I can hear you fine.

MR. GOLD: Okay, thank you. Your Honor, we

support what the United States Trustee's office has said. I don't have any feeling I need to repeat that.

I would just add that, as Mr. Higgins alluded to, we are expecting that sometime soon there will be an order confirming the plan and that then there will be motions for a stay pending appeal. And we suggest that at a minimum, this motion is premature until a stay pending appeal as to (indiscernible) granted, then this would be a preparation for something that may not occur. And simply put, it would be more efficient to (indiscernible) --

THE COURT: You froze. But you were about to say that this would be more efficiently dealt with as part of a stay pending appeal motion. Is that what you were about -- you broke up right when you --

MR. GOLD: Yes, Your Honor. That is correct.

THE COURT: Okay.

MR. GOLD: Your Honor, I have nothing to add.

THE COURT: All right.

MR. UNDERWOOD: Your Honor, this is Allen Underwood on behalf of the Canadian Municipal Creditors and First Nations Creditors. I just wanted to indicate -- obviously we filed a joinder pleading. But I think we went further, and we completely agree with statements made by the U.S. Trustee and the non-consenting states. We went a step further even to say that this is a case where we have the

ability to case management, a likely appellate process, have a global consent order that might give all a path and some level of confidence. Expedition, cost production in terms of where this is going so that there can be a relatively defined and short appellate process as necessary here if that's where this all ends up going. I know that's beyond the scope of the motion, but I wanted to make it clear that that's something that the Canadian Municipalities and First Nations are more than happy to negotiate and assist them with --

THE COURT: As far as I'm concerned, there is no need for negotiation there. Every appellant should be moving for expedited review, and I assume they'll get it.

We just lost the picture. It came back.

MR. GOLDMAN: Your Honor, good morning.

THE COURT: Good morning.

MR. GOLDMAN: Irve Goldman, Pullman & Comley, for the State of Connecticut. I just wanted to put our support for the position of the U.S. Trustee and the State of Washington on record.

It does seem anomalous, if you will, that this amount of money would go out the door until a Court rules on a stay. And of course there is the potential for reversal. So this money could be retrievable.

THE COURT: Could I -- maybe I am operating under

a misimpression here. As I read the proposed order, Paragraph 11 provides that if the Debtors are unable to consummate the plan after some or all of the proposed advances have been issued. Any unused portion will be required to be returned to the Debtors. And then it provides further the Debtors shall be required to prenotice the motion, and absent further authorization from the Court, payment of the proposed advances to the PI Trust, the NAS Monitoring Trust, the Third Party Payor Trust, TAFT, the Hospital Trust, and NOAT shall be recharacterized and/or reallocated pursuant to Sections 502 or 506(b) of the Bankruptcy Code as payments on account of the claims asserted by the holders of the applicable claims, and payment of the Topco advance shall be recharacterized and/or reallocated pursuant to Sections 502 and 506(b) of the Bankruptcy Code.

So how is this going out the door?

MR. GOLDMAN: Well, actually if the money was recharacterized in that manner, it wouldn't actually be in the pockets of any creditors.

THE COURT: Right. It doesn't go out the door. It's recharacterized.

MR. GOLDMAN: To the extent it's unused. But by the time a ruling comes down on a stay motion, and certainly if we can make it through the appellate process, a ruling on

appeal, I would say there is a substantial likelihood that all of the money would be spent at that point. So that is my point. I did notice the provision that Your Honor just quoted, but that was my thinking on it.

THE COURT: Okay.

MR. GOLDMAN: I would also -- if Your Honor is inclined to grant the motion, I would just ask that there be an express finding in the order that this money spent and the preparatory actions taken wouldn't constitute substantial consummation.

THE COURT: Well, I'm perfectly happy to make that finding as well as state that the appellee in any appeal, which would be the Debtors only since they are the proponent of the plan, has waived the right to argue equitable mootness.

MR. VONNEGUT: Your Honor, we're fine with all of that. And just to briefly respond to a few things that --

THE COURT: No, you don't need to respond. This is just an absurd opposition. It truly is. It truly is. I understand why you would make it so you could get it on the record. But now that it's on the record, it's entirely clear. No court, given what I've just laid out, would find that these payments to expedite distributions to creditors represents an argument for equitable mootness, let alone would justify equitable mootness. And the Debtors have

waived the argument. I don't know what more one could want.

Now, I understand you want to have that on the record. That's fine. But I don't see why we should be prolonging this.

MR. EDMUNDS: Your Honor, if I may, Brian Edmunds for Maryland. I don't want to prolong this. I have nothing to add, but just for the record. Thank you.

THE COURT: Okay, very well.

So, look, everyone in this case is, rightly so, being a careful lawyer. So I'm not faulting people for making the objection. But I think the record is clear under these circumstances that the concern that the U.S. Trustee and the others have raised is simply not a legitimate concern with respect to this motion somehow creating a basis for equitable mootness with respect to an appeal of a plan.

Mr. Preis, I gather you wanted to say something.

MR. PREIS: For the record, Your Honor, Arik Preis, Akin Gump Strauss Hauer & Feld. I was going to say what you said.

THE COURT: Okay.

MR. PREIS: I was going to do it a lot more colorfully. So if that's the way Your Honor is going to rule (indiscernible).

THE COURT: Okay. All right. Does anyone else have anything more to say on this motion?

MR. TROOP: Your Honor, Andrew Troop for the non-consenting state group. Just a cleanup matter, I think Mr. Underwood referred to the objecting parties in this motion with the non-consenting state group. The non-consenting state group has not objected to this motion.

THE COURT: Right.

MR. TROOP: Just so the record is clear. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. ECKSTEIN: Your Honor, this is Kenneth Eckstein of Kramer Levin. We support the motion and its entry. I have nothing further to add. Thank you.

THE COURT: Okay. All right. I will grant the motion. This motion seeks authorization to use up to -- slightly over -- well, $6.8 million in cash to establish the various trusts under the plan as far as the advance work to be done on them, including creating website and other mechanisms to expedite distributions to the beneficiaries of the trust under the plan.

The parties in these cases, including those who have objected to this motion, as well as those who support it, have all recognized that given the number of deaths on a daily basis because of the effects of opioids, there is a clear purpose, both as a public health matter as well as a bankruptcy matter, to expedite the distribution of funds to

abate the effects of opioids. These measures provided for in this order would do that, I believe, by a number of months, which translates into real lives being saved because of that.

The motion has appropriate safeguards in it, as just quoted from paragraph 11 of the proposed order as far as any reallocation and/or return of the funds if for some reason the plan does not go forward to the effective date. Further, the Debtors have agreed to waive the argument of equitable mootness on appeal insofar as it could be argued with respect to the grant of this motion and the expenditure of these funds. They are the only appellees on the appeal given that they are the only proponents of the plan. Of course many other groups in these cases would support them on that appeal, but it is their right to argue equitable mootness. They are fully within their rights to preserve that argument generally, but they recognize that they are not really giving up anything meaningful to waive equitable mootness based on the grant of this motion given the fact that it is almost inconceivable to believe that any court would conclude that the grant of this motion and its implementation would render the plan equitably moot.

So I will grant the motion. You should add the waiver point, Mr. Vonnegut, to the order. And then you can email it to chambers.

MR. VONNEGUT: Thank you very much, Your Honor. We'll do that.

THE COURT: Okay. Thanks.

MR. HUEBNER: Your Honor, for the record, I think that brings us to the second contested matter, Item 5 on the agenda, which is the 2021 KEIP which is, of course as the Court knows, split off from the KERP that was approved at the end of July. So if I can be heard clearly, for the record, Marshall Huebner. I will be presenting this motion for the Debtors.

THE COURT: Okay, very well.

MR. HUEBNER: So, Your Honor, first to set the stage. On this matter, as on so many other matters, we adjourned consideration of this motion because, as always, we went to our creditors and engaged in extensive negotiation with key stakeholders. And as the motion papers lay out, we made a bunch of modifications, which I'll get to in a few minutes, that led to the Ad Hoc Committee, the MSGE Group, and of course the UCC itself not having any remaining objections to the substantially amended 2021 KEIP plan.

Your Honor, of course much of the program is going to be quite familiar to the Court, as it is in fact nearly identical to the incentive plan approved by this Court last year and quite similar to the one approved by the Court the year before that. This is an annual plan, and we'll talk in

a few minutes about timing and the U.S. Trustee's kind of alleged concerns about timing and the like.

Your Honor, with respect to the evidence, once again, it is all on our side and it's quite substantial. There are two supporting declarations. There were originally two supporting declarations from Jon Lowne, the Debtor's CFO. I have one from Josephine Gartrell, a senior director at Willis Tower Watson, who was the independent compensation consultant who advised the Comp Committee.

Your Honor, you already entered those declarations into evidence in July at the KERP hearing. There is a supplemental further declaration from Mr. Lowne, the second supplemental declaration, which is Docket Number 3744 that addresses the modifications that were done subsequent to his original declarations and some of the issues raised in the objections. We would ask that the Court enter the declaration into evidence at this time.

I would note that we have communicated with the parties and as we understand it, Mr. Schwartzberg will have a few questions for Mr. Lowne. I don't think anyone has questions for Ms. Gartrell. And then the other parties, the other two objectors, which we'll get to, either don't intend to cross-examine, or I think Mr. Troop reserved his rights in case something comes up and they want to ask a question or two. But I think that's probably the evidentiary lineup

for today.

So I would like to move formally to have Docket Number 3744 entered into evidence as another declaration in support of the motion.

THE COURT: Well, let me -- were you going to present Ms. Gartrell first and then Mr. Lowne?

MR. HUEBNER: So, Your Honor, there is no -- I wasn't going to present Ms. Gartrell because nobody wants to cross-examine her and her declaration is already admitted into evidence as of July. And so I think that's just in and done. I was going to present the motion first. And I assume Mr. Schwartzberg would cross-examine Mr. Lowne. He said he had a few questions for him, which of course he is well within his rights to want to ask.

THE COURT: Okay. I did admit Ms. Gartrell's declaration in the hearing in July, which was on the KERP. But let me ask Ms. Gartrell to go under oath with respect to the declaration regarding the KEIP.

Ms. Gartrell, would you raise your right hand, please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MS. GARTRELL: I do.

THE COURT: So, Ms. Gartrell, in a declaration dated June 28th, 2021, you submitted your testimony in support of the Debtor's motion, which sought both approval

of the 2021 KERP and the 2021 KEIP. We are here today on the Debtor's request for approval of the 2021 KEIP, which request had been adjourned pending the conclusion of the confirmation hearing.

Sitting here today, September 13th, and knowing that the Debtor's motion itself as supplemented in its reply and by Mr. Lowne's second supplemental declaration updates, the Court, on changes to the KEIP that have since negotiated and the like. Is there anything that you would wish to change in your June 28th declaration?

MS. GARTRELL: Your Honor, nothing more than what's in the motion and the reply. So the payments of the KEIP have changed, and the fact that there is no acceleration upon emergence has changed. So that is different from what's in my declaration. But I don't have anything else to add.

THE COURT: Okay. So does anyone want to cross-examine Ms. Gartrell on her declaration?

All right. I will admit it for purposes of this motion, this aspect of the motion, that is.

Okay, so you can go ahead, Mr. Huebner, to Mr. Lowne's declaration. And again, there are two of those. I would propose to swear him in now and then we can have argument after his testimony.

Mr. Lowne, would you raise your right hand,

please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. LOWNE: I do.

THE COURT: Okay. Mr. Lowne, you submitted an initial declaration in support of the Debtor's motion for approval of a KERP and a KEIP for 2021. It was dated June 28th, 2021. Recognizing that you have since submitted a second declaration in support of that portion of the motion seeking approval of the KEIP that's dated September 9th, 2021, which I'll refer to as your second declaration, is there anything in your first declaration, the one from June, that you wish to change?

MR. LOWNE: No, other than the updates that were made in the second declaration, which included for example an update in the performance of the scorecard metrics, nothing else that I would want to change.

THE COURT: Okay. And let me ask you the same question regarding your second declaration. It's only been a few days, but is there anything that you would wish to update in that one, knowing that it would constitute your direct testimony for this aspect of the motion?

MR. LOWNE: Nothing to update, no.

MR. HUEBNER: Okay . Does anyone want to cross-examine Mr. Lowne on either of his declarations?

MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg

for the U.S. Trustee's Office. I do have a limited cross of Mr. Lowne.

THE COURT: Sure. You can go ahead.

MR. SCHWARTZBERG: Thank you, Your Honor.

CROSS-EXAMINATION OF JONATHAN LOWNE

BY MR. SCHWARTZBERG:

Q Mr. Lowne, can you hear me okay?

A I can.

Q Great. Just initially, Mr. Lowne, it is a pleasure to see you again. We haven't spoken in quite some time.

A Likewise.

Q I wanted to first examine the innovation and efficiency metrics that you list.

A Sure.

Q The payment is contingent upon the Debtor achieving certain performance metrics, correct?

A Correct.

Q And there is a threshold level that needs to be met before an award can be paid for that metric, correct?

A Correct.

Q And I believe it's 75 percent of the award is earned when the threshold level is met, correct?

A That is the threshold, correct.

Q Please turn to -- I'm going to reference your initial declaration. It's Paragraph 29, which I believe is Page 71

of 107 of the PDF. And there is a Table 4.
A Yes, I've got it. Thank you.
Q All right, excellent. That table lists the target metrics that need to be met for the innovation and efficiency performance metric, correct?
A That's correct.
Q And the target level metric needs to be met for the full award for each metric to be paid, correct?
A That is correct.
Q Table 4 does not list the threshold metric that needs to be met for the 75 percent award. Is that correct?
A Correct. The 75 metric is an aggregate across every single metric. But we do have the scales that are in effect for each of these financial metrics in Table 4 that would determine the payouts upon achieving or exceeding or not achieving each of these financial metrics you refer to.
Q I want to go through these and figure out what the threshold metric is for each.
A Yes.
Q If you look at the first one, the consolidated total business operating profit, it's a target of $69 million. What is the threshold metric for that performance award?
A You know, I don't have the numbers in front of me. It's a scale that goes from -- all the way from zero to above a hundred percent, from my recollection. And there's

different dollar amounts that would determine the payout. So, again, the 75 percent is across the totality of all of the metrics that are in the scorecard.

Q So are you saying if I took 25 percent off of $69 million, that would give me the threshold metric?

A No. The scale wasn't a perfectly linear scale from my recollection. So 25 percent more doesn't mean 25 percent more for this individual objective. And equally, 25 percent less doesn't equal 25 percent less on this individual metric. We had a non-linear scale to the best of my recollection that determined the payout for each of these financial metrics.

Q So just to be clear, as you're sitting here today, you cannot give me the dollar amount for the threshold metric for the consolidated total business operating profit?

A I apologize. I haven't committed the entire scale to memory, but about six months ago I presented it, or it was presented.

Q I understand. Just to save time, I assume that would be the same answer for the Adhansia XR net sales, the Avrio net sales, and the Rhodes reduced funding metric as well. You couldn't give me the dollar amount for the threshold for those?

A Yeah, exactly. I can't give you the scale for exceeding or not achieving each of the financial metrics

Correct.

Q Okay. Thank you. I am going to stay at that table and I have a few other questions regarding historical financial information.

A Sure.

Q The Debtor's 2020 performance metrics -- this is on Table 4 -- the 2020 performance, or the results of the 2020 are not included in Table 4 or your declaration. Is that correct?

A That's correct.

Q Okay. So let me look at the first one, the consolidated total business operating profit metric. According to the supplement you filed on Paragraph 15, that metric was not part of the 2020 incentive plan. Is that correct?

A Correct.

Q And in fact it's a combination of three metrics that were used in the 2020 KEIP plan.

A That is correct.

Q And just so we could be more specific, it deals with the combination of three older metrics, or the Purdue Branded Operating Profit Metric from 2020, the Adhansia XR Operating Loss Metric, and the Avrio Operating Profit Metric, all from 2020. Is that correct?

A That is correct. They would be three components of the

total consolidated business profit. Correct.
Q Okay. I'm just going to see if you know these numbers. Do you know what the 2020 Purdue Branded Business Operating Profit was?
A I don't recall the exact number. I don't have that in front of me, no.
Q Whether that -- I'm sorry, I apologize.
A No, that's really all I was going to say.
Q Okay. What about the 2020 Adhansia XR Operating Loss? Do you have the 2020 results from that?
A I don't have it in front of me, no.
Q And just the last one, the 2020 Avrio Operating Profit, if I'm pronouncing that correctly.
A Again, I don't have that in front of me, no.
Q Okay. Let me go to the next innovation and efficiency performance metric, the Adhansia XR Net Sales. Do you know what the 2020 results were for the Adhansia XR Net Sales?
A Again, I'm going on memory, but I believe it was about $4 million, in that vicinity.
Q I'm sorry, did you say 40 or four?
A Four.
Q And the Avrio net sales?
A The Avrio net sales was in the vicinity of about $94 million. Again, that's out of memory without having the number in front of me.

Q And then that fourth metric, the reduced Rhodes (indiscernible) 2021.
A Yeah.
Q That was not -- that's a new metric, correct?
A It's a newly-worded metric, yes.
Q And the old metric was an operating loss, a Rhodes operating loss at $35 million, correct?
A The 2020 metric was worded that way, yes.
Q Okay. And what was the 2020 Rhodes operating loss?
A The 2020 operating loss I think was in the region of about $35 million.
Q So to your recollection when figuring out the 2020 KEIP payments, did they make the target or did they not make the target? Because they are about the same number, and it's hard to say from your testimony which occurred.
Q From my memory, I think they were directionally very close to that target, but I'd have to go back and look and compare for the Rhodes business the actual loss versus the target.
Q Okay. Now, just turning back to consolidated total business operating profit. That metric is $69 million, correct?
A That's correct.
Q And that $69 million is less than the aggregate of the three metrics used in 2020 to make up the consolidated total

business operating profit. Is that correct?
A That is correct.
Q And if my math is correct, the three 2020 metrics that make up the consolidated total business operating profit added up to $79.6 million?
A I trust your math for those three metrics, yes.
Q Just your 2020 declaration in support of the 2020 KEIP, which you probably don't have in front of you. That's ECF 1674. There was a table that you may recall that listed the metrics. I've reviewed that, and I'll tell you my math came out that those were $79.6 million. You have no reason to disagree with me, do you?
A I have no reason to disagree with you, and I don't have it in front of me.
Q So assuming my math is correct, the $69 million consolidated -- 2021 consolidated total business operating profit metric is approximately $10.6 million less than the 2020 metric for the three that are consolidated into the current metric.
A I don't disagree with your math and your statement, correct.
Q I just want to go down one, the next one. The Adhansia XR net sales. The 2021 Adhansia XR net sales target metric was $14 million, correct?
A That's correct.

Q And that's less than the 2020 Adhansia XR net sales -- or less than the 2020 Adhansia XR net sales target. Is that correct?

A It's correct, with the comment that the actual sales in 2020 were $4 million. So this target of $14 million was pretty significant growth over the 2020 actual. And that reflects the challenges of launching any new product in a COVID environment when a salesforce have more limited access to calling upon healthcare providers.

Q And just to close the loop, the 2020 target for that was $18 million, correct?

A That's correct, which we didn't achieve.

Q I want to turn to -- I guess it's Paragraph 30 of your declaration. It's Page 71 of 107. It's right below Table 4.

A Yes.

Q That's the People and Culture Metric, correct?

A Correct.

Q And that requires the Debtor to conduct readiness activities to prepare for emergence from bankruptcy as well as establish and support implementation of a diversity, equity, and inclusion roadmap through the end of 2021, correct?

A That's correct.

Q Could you give an example of a readiness activity to

prepare for an emergency from bankruptcy?
A Yeah, there's many. I mean, it involves many, many people from our company working on that. I'll speak just to the groups that report to me. I mean, we have significant IT implementation going on in our SAP financial systems to set up (indiscernible) Pharma as the new entity that will be transacting the entirety of our business. As many of the creditor groups know because we presented to them many times, the significant amount of work with our insurance companies to provide the new director and officer insurance and also renew every single line of our insurance policies under (indiscernible) Pharma. We've got new bank accounts to set up. We've got to configure our treasury workstation for the cash movements between the new company and the existing companies. We have work going on to get all of the required state licensures for us to do business in all of the different states. That's just some examples of the workstreams that are going on. But they are significant.
Q And how do you determine if a particular workstream actually is successful and meets the requirement for an award?
A So like all of the objectives in our scorecard, ultimately a decision related to meeting an objective is based upon the decision of our compensation committee.
So in approximately late January or February of next

year, there will be a presentation to the compensation committee on all of the activities that have gone into the People and Culture Objectives that we're talking about now, which represent ten percent of our scorecard. All of the other objectives in our scorecard, other than People and Culture are point-based objectives. You either achieve them or you don't. These People and Culture objectives that we're now discussing will be based upon a presentation from management in terms of all of the activities that have been performed. And then ultimately the payout percentage will be based upon the judgement of the compensation committee based upon the number of initiatives and their perceived performance against those objectives.

Q And when would that presentation to management regarding whether they accomplished or did not accomplish a task, when would that take place?

A I think the timing of that is typically in February because we close our books for the -- our financial records for the year in late January. So it's typically February where the compensation committee is presented with the results against the scorecard.

Q And I want to turn to the next metric within the People and Culture Metric. Did you disappear, Mr. Lowne?

A Sorry. If I don't move, my lights go off. Sorry.

Q I understand that. Do the Debtors have a Diversity and

Inclusion employee or officer?
A We have a team of people that are involved in the diversity, equity, and inclusion initiatives for our company.
Q So there's not one point person?
A Well, there's an individual that is leading that team, but I don't believe that they've had any titling that reflects that they're leading that team, similar to we have a COVID task force that is setting the policies for our company. We have a lead person for that team. I don't believe they have that reflected in their titles.
Q Could you give an example of an activity that would accomplish this task?
A Sure. So we have sub-teams. One of our sub-teams is headed up by our head of HR. And as you can imagine, there's members on that sub-team. And what they're looking to do is ensure that diversity and equity considerations are built into our hiring processes, how we retain employees, and how we look to provide opportunities for people to grow within the company considering diversity and equity. So that's one example of an initiative that's ongoing at the moment.
Q And similar to your other People and Culture metric, that's presented in February of 2020 to management?
A February of 2021, yeah.

THE COURT: I'm sorry, 2022, wouldn't it be?

THE WITNESS: Oh, 2022.

THE COURT: Yeah. Okay

THE WITNESS: Thank you.

MR. SCHWARTZBERG: Thank you, Your Honor.

BY MR. SCHWARTZBERG:

Q I want to turn to the Value Creation Metric, which I believe -- if we could go to -- I guess it's Paragraph 11, Page 4 of your supplemental application. And do you see there is a table that starts at the bottom of Page 4 that spills over to Page 5 and 6?

A Yes.

Q Do you see the first -- it's under Public Health Initiatives, "Provides support to HRT to allow an NDA filing for OTC intranasal Naloxone"?

A Yes.

Q Now, it seemed to indicate that that metric needs to be met by Q3 and it's behind schedule, correct?

A Yes.

Q If that metric gets met in Q4, will there still be an award paid? Or once Q3 is done, there can't be an award on that?

A So, similar to the financial metrics that I describe, for each quarter that a metric is behind schedule, there is a reduced payout percentage. And for each quarter that a

metric is ahead of schedule, there is a percentage payout above target or above the hundred percent. I can't remember that exact scale. I don't have that in front of me. But it's the same concept. So that was how I came up -- why I made the comment earlier that the 75 percent threshold or how we measure the scorecard is an aggregate rollup of the map of every single objective using those tiered scales.

Q So if they complete this in Q3 -- Q4, I apologize, there is a bonus -- I'm sorry, an award above compensation paid, but not the full amount.

A Well, no. If it's in Q4, it would be one quarter behind schedule, so it would be something south of 11 percent -- a hundred percent.

Q And if it was in Q1 of 2022, something could be awarded. But, once again, even further south.

A That's exactly right. Yeah. Yeah.

Q I want to flip to the next page. And I guess sort of towards the bottom under the (indiscernible) and progressing, the generic pipeline. Do you see that box?

A I do.

Q And I reference you to that box because, I apologize, I'm going to have a little difficulty with the third sub-box down, Dihydroergotamine nasal spray?

A Yes.

Q My first question is can you please pronounce that?

A Um...
Q Okay, then it's not just me. Okay, that's fine.
A Yeah. I wouldn't pronounce it any different from you. You do a better job.
Q Okay. Now, that indicates that it's not achieved by the target date, but it's due on Q3. Is that correct?
A That's correct.
Q So even though it's Q3, which is behind the target date, an award will be paid, yet south of what would be paid if they did it on Q2. Is that correct?
A That's correct.
Q And the same question with the last sub-box, the Varenicline tablets. Once again, if it's done by Q4, although its's beyond the Q3 target, something less would be paid. Is that correct?
A That's correct.
Q And I want to go down to the next sub-box, Innovation and Efficiency Performance Metrics.
A Yes.
Q Do you see the Adhansia XR Net Sales, on track to fall short?
A I do.
Q Is that on track to fall short the target or the threshold?
A I think at this stage of the year it is borderline

whether it will hit the threshold 75 percent based upon the scale, which I can't remember the details of. But Adhansia is performing quite a bit below the $14 million target. So I think the payout percentage will be less than the threshold in this example.

Q I just have one last question. And this was from the supplement, so it's not from your declaration. But I just want to be clear on the record. Maybe Mr. Huebner would talk to it. But the KEIP awards now that -- the timeline for payment has been changed. So nothing is going to be paid until June 30th, 2022?

A That's correct.

MR. SCHWARTZBERG: Your Honor, I don't have any more questions.

And I thank you for your time, Mr. Lowne.

THE COURT: Okay.

THE WITNESS: No problem.

THE COURT: Does anyone else want to cross-examine Mr. Lowne?

Okay. Do the Debtors have any redirect?

MR. HUEBNER: Your Honor, Mr. Kaminetzky and I are in two different locations, so I'm going to ask Ms. Benedict to answer that question for us.

THE COURT: Okay.

MS. BENEDICT: No, Your Honor. No redirect.

THE COURT: All right. So I did have a couple of questions, Mr. Lowne. And this may lead to redirect.

Mr. Schwartzberg took you through the chart that is in Paragraph 11 of your supplemental declaration. And I think with the exception perhaps of Adhansia where that chart shows that some metric is behind schedule or not to be achieved, your answer was that it still might well warrant payment above the threshold, albeit below the target. Do you recall that testimony?

THE WITNESS: Yes. And if I wasn't clear, my recollection based upon our midyear review is that for this individual metric, the payout may actually be less than the 75 percent threshold.

THE COURT: Right. That's for Adhansia. But for the other ones on the chart, my understanding was that where your chart had said not achieved by target date, behind schedule in a number of places. With the exception of Adhansia, the measurement might still lead to a payment under the KEIP, albeit one that is below the target, but still above the threshold?

THE WITNESS: That's correct. Yeah.

THE COURT: Okay.

THE WITNESS: If it's helpful, Your Honor, we did do a midyear review in the aggregate across all of the metrics, some of which are overperforming, some of which are

underperforming, and some are on track. We estimated then that the payout would be something around 95 percent. So that's the aggregate.

THE COURT: So let me ask you, what is the rationale for having a payment above the threshold, albeit below the target, if the target is not met?

THE WITNESS: Well, I think the two parts to my answer -- I mean, we do look at the scorecard in aggregate, which -- so we look at all of the metrics, add up the scores of all of them, and that was the 95 percent that I came up with. But I think the rationale for coming up with a 75 percent threshold as opposed to -- I think what your question is, if all of the individual metrics added up in aggregate to 70 percent, why wouldn't you pay 70 percent versus 75 percent. I think the answer is that as we were considering the KEIP program, we wanted to be incentivizing enough given the uncertainty of the situation to our insiders. And similarly when we presented the KERP, to have some minimum level that would -- the insiders would understand given that uncertainty and given the fact that these payments are now not going to happen until June 30th of next year.

THE COURT: Okay. So is achieving -- or when these metrics were set -- and I gather they were set -- even though you're seeking approval for them now, they were set

many months ago. In achieving these metrics, is it hard to achieve the threshold?

THE WITNESS: I think we set the objectives, they were finalized in early February. We presented to all of the employees in early February. And there was certainly no certainty that we could achieve all of the metrics. As you can see, some of them are overperforming and underperforming. So achieving 75 percent as a threshold, there was no guarantee. But obviously I now have the benefit of hindsight with being nine-and-a-half months into the year. And it certainly appears that we are going to be above the threshold. And if you ask me my best guess now in the aggregate, it would probably be in the mid-ninety percent.

THE COURT: Okay. What was the basis, if this was the case, for thinking back last February that the threshold would be difficult to achieve?

THE WITNESS: So to the best of my recollection, the concept of the threshold was not discussed back in February of last year to the best of my recollection. I think this was something that we discussed in light of the fact that we couldn’t confirm to our insiders the incentive plan. It was something that was discussed at approximately the time of filing the various declarations to the Court. That’s my memory, and any of the lawyers can correct my

memory if that's incorrect.

THE COURT: Let me make sure I understand that. So the metrics were set in February, but the threshold was set later?

THE WITNESS: To the best of my memory. I don't recall what we presented to the compensation committee back in February the 75 percent threshold. But I think when we updated the compensation committee on the plan, that was when the 75 percent was discussed.

THE COURT: And the rationale for the 75 percent was what again? If I heard you right, I think I heard that it was the delay in implementing the incentive plan. Was that the rationale behind it?

THE WITNESS: A combination of the delay in implementing the plan, the delay of the payout until June 30th, the agreement to pay a reduced amount for the long-term incentive. They were all factors in having the 75 percent threshold added.

THE COURT: Okay. All right. Okay. Any questions on that set of questions by me from either Mr. Schwartzberg or the Debtors?

MR. SCHWARTZBERG: Not from me, Your Honor, thank you.

THE COURT: Okay. Any redirect on that by the Debtors?

MR. KAMINETZKY: No, Your Honor. Ben Kaminetzky, Davis Polk.

THE COURT: All right.

MR. HUEBNER: Your Honor, one just note from me if I may. You know, a lot of the Court's questions relate to the fundamental structuring of the plan. And obviously Mr. Lowne is not our expert witness on that topic. He is the CFO of the company. Ms. Gartrell did obviously put in a declaration that I think is pretty complete and quite detailed about the fact that Willis Towers Watson was actually the group that worked with the compensation committee on structing of the plan. And I believe that her testimony is that both as to structure and content, the plan is typical, appropriate, and reasonable.

Your Honor was essentially asking questions about kind of is there a cliff, sort of reverse cliff vesting. And my general understanding -- I'm obviously not the witness -- is that that type of structuring is actually quite typical. And I actually believe the Gartrell declaration covers the topics that Your Honor asked Mr. Lowne about. To his credit, he does many things for the company, he is not our compensation expert. He is the CFO. And I just want to point that out so the record is clear that, you know, we do have someone whose job it was to ensure that the design of the plan was appropriate, industry

standard, typical, and incentivizing.

THE COURT: Well, is she still available?

MS. GARTRELL: I am here.

THE COURT: Okay. Ms. Gartrell, I want to ask you I guess then the same questions I asked Mr. Lowne.

MS. GARTRELL: Sure.

THE COURT: So you are still under oath. My focus was really on the rationale for a threshold award that is below the performance targets.

MS. GARTRELL: Yes.

THE COURT: And what is your understanding as to when the threshold award aspect of the KEIP was adopted?

MS. GARTRELL: My understanding was that it's a historical measurement. So in the 2020 KEIP as well as the 2021 KEIP, there was the concept of having a threshold performance metric at 75 percent of target and then a target/max at 100 percent. A typical plan, and Purdue's plan prior to entering bankruptcy, was to have a 150 percent upside in their program as well, which is typical in the pharmaceutical industry. But due to the circumstances, there is no upside in this plan. So there is only the downside. And so if they hit the 75 percent threshold, then on a sliding scale go up to a hundred percent is the maximum that can be achieved under this plan.

THE COURT: Okay. And what is the rationale in an

incentive plan to have the plan provide for a threshold amount even if the target is not met by 25 percent or less?

MS. GARTRELL: So if you don't hit the threshold, there is no payment. But companies typically want to have some performance sensitivity and still incentivize their senior leadership team to continue to try to achieve target, but recognize that they still need to have skin in the game and that it's not just a make or miss target. You don't just get your target bonus at a make or miss level, but there is some sliding scale at a threshold level up to target.

THE COURT: And is that a common feature for incentive plans?

MS. GARTRELL: Yes, it is.

THE COURT: Were you or your team involved in setting the targets, or was that a management function?

MS. GARTRELL: It's typically a management function. My team was involve in helping set the 75 percent threshold, the 100 percent target, and suggesting that there be no maximum or upside for exceeding target.

THE COURT: So then you and our team were involved in setting the 75 percent threshold I gather from your answer.

MS. GARTRELL: Yes.

THE COURT: And the rationale for that was -- I'm

taking from your answer, tell me if I'm wrong, two things. One, there was no -- the upside under the prior compensation arrangement has been removed. And why particularly that it was a 75 percent threshold met as opposed to say 90 percent or 65 percent?

MS. GARTRELL: Typically, Your Honor, the threshold is set somewhere either at 50 percent or 75 percent. And then targets at a hundred percent. And the upside maximum can be somewhere between 150 to 200 percent. And so 75 percent seemed like a conservative and reasonable threshold performance metric.

THE COURT: Did it have anything to do with the market assessment of base compensation for these five people?

MS. GARTRELL: No. It's purely a design feature.

THE COURT: Well, maybe I wasn't clear. The declaration states that for four of the executives, their base level of compensation is between 45 percent and 60 percent of executives that perform similar functions in the industry. The one exception being the general counsel. Are you saying to me that the -- saying a below target threshold for an incentive plan really had nothing to do with that factor or that fact?

MS. GARTRELL: So my answer is two parts. So the bonus opportunities are set typically as a percentage of

base salary. In this case -- so it does have -- so the actual amount that you would receive as a bonus is generally set at the percentage of base salary. So from that perspective, it is relevant. But here, the KEIP pays out at 75 percent of threshold. That's how the bonus is determined. And then a hundred percent at target.

THE COURT: Okay. So really it's more -- the choice of the 75 percent threshold was simply more focused on what a threshold structure is generally in the industry?

MS. GARTRELL: Yes, it is, Your Honor. It's whether you have hit 75 percent of your target from a performance perspective then determines the payout. And it's actually a conservative number because it's typically 50 percent.

THE COURT: Okay. All right. Does anyone have any questions of Ms. Gartrell related to that discussion?

MR. HUEBNER: Your Honor, just to clear my own mind, I'm going to have about 35 seconds of redirect for her if that's okay.

THE COURT: Okay.

REDIRECT EXAMINATION OF JOSEPHINE GARTRELL

BY MR. HUEBNER:

Q So, Ms. Gartrell, just to make sure I'm following, because frankly I was not expecting to get into all this detail, and I thank you for -- and you are under oath. You

have been recalled to the witness stand. So just to be clear, you testified that there is typically 150 to 200 percent upside opportunity if target is exceeded.

A Correct.

Q And here we don't have that at all?

A That's correct.

Q Okay. And that the threshold that begins the sliding scale, the concept of the threshold and the concept of the sliding scale is absolutely typical?

A Yes, that's correct.

Q And the threshold normally starts at 50 percent, but here, to use your words, it's 75 percent. So it's actually also conservative or less compensatory than industry norms would be.

A Correct.

Q Okay. And then the Judge asked you a few minutes ago about sort of overall compensation numbers. I think you said that's a little bit different than the structural design of plans. Do you remember that testimony?

A Correct, yes.

Q Okay. But to be clear, your testimony, if I have it right -- and if you need to turn to your declaration, please do -- is that the KEIP group, leaving out the GC for a minute, without the KEIP would be 27 percent below the 25th percentile of industry compensation. Is that correct?

A That's correct.
Q And even -- and that they would be 46 percent below the 50th percentile. So they would be making 46 percent less than median compensation without the KEIP. Is that correct?
A Correct.
Q Okay. And while it's not related to the structure of the KEIP, I assume the fact that the KEIP puts the participants according to your declaration --
MR. SCHWARTZBERG: Your Honor, I object. These are leading questions.
THE COURT: It's true. You shouldn't be leading, Mr. Huebner.
MR. HUEBNER: Okay. I apologize. These are just facts in the declaration. But let me rephrase it.
Mr. Schwartzberg, you're right. I apologize. As I said, I didn't know we were going to this level of detail. So let me ask my last couple of questions a different way.
BY MR. HUEBNER:
Q Ms. Gartrell, can you -- do you remember what percentile of overall compensation the insiders, leaving aside the general counsel, are at assuming the KEIP payments are made?
A Yes. They're right at median in the aggregate.
Q And when you say median, can you explain what you mean?
A It's the 50th percentile compared to market. So we

compare the total direct compensation, which is represented in our pharmaceutical survey in 2020, to the total amounts under the KEIP plus base salary to figure out how they compared to market in the pharmaceutical industry. And they are right in the middle.

Q Okay. And did that go into your ultimate determination about the overall reasonableness of the plan?

A It did, yes.

Q Okay.

A It's a reasonable -- I mean, they have to be paid competitive to market. And they're right at median. So they are not overly paid under our market competitive analysis.

Q Okay.

MR. HUEBNER: Your Honor, I'll leave it at that. Because, again, I think the declaration is quite detailed and speaks for itself. But I just think it's important context for some of the questions that the Court had.

THE COURT: Okay. All right. Let me ask again, does anyone else have any questions for either Mr. Gartrell or Mr. Lowne on this last set of questions?

MR. SCHWARTZBERG: Your Honor, just two quick questions, I believe.

RECROSS EXAMINATION OF JOSEPHINE GARTRELL

BY MR. SCHWARTZBERG:

Q Ms. Gartrell?
A Mm-hmm.
Q Can you hear me?
A I can.
Q My name is Paul Schwartzberg. I am an attorney with the U.S. Trustee's Office. I just wanted to confirm, you had indicated that it's management that sets the threshold and target dollar amounts.
A They set the actual goals, yes.
Q And is it correct that management did not, as Mr. Lowne said, did not determine the thresholds until they filed the motion, or the declarations as he indicated?
A I don't know the answer to that question. The threshold number, the 75 percent, is a historical percentage. That was the same as the 2020 design. And so it just carries over to 2021. But I don't know when they actually set the metrics.
Q Okay. Thank you.
THE COURT: Ms. Gartrell, I want to just follow up on one point from Mr. Schwartzberg. When you said management set these goals, were these goals then reviewed by the compensation committee and the Board?
MS. GARTRELL: Yes. So the typical process is that management sets the goals and they can change year over year. And it's my understanding that they've had some

moderate changes this year as well based on business circumstances. And so the management typically sets the goals in the beginning of the year, and then they assess the achievement of those goals toward the end of the year. And it's my understanding that they will assess the achievement of those goals at the beginning of 2022.

THE COURT: And what is the role of the Board and the Compensation Committee in setting the goals?

MS. GARTRELL: Management presents the goals to the compensation committee based on various operational, financial, and individual achievements. And the Compensation Committee approves those and recommends them to the Board.

THE COURT: Okay.

MR. HUEBNER: Your Honor, I have just a couple of redirect questions on that exact point.

FURTHER REDIRECT EXAMINATION OF JOSEPHINE GARTRELL

BY MR. HUEBNER:

Q Ms. Gartrell, the distinction is actually quite important. And so I'm going to actually have to pause you on that. I think in your initial testimony, you said the company. And then Mr. Schwartzberg, I'm not sure intentionally or not, introduced the kind of management. And you responded. And I just -- we need to stop on that. Who actually approves the goals and the metrics in the

compensation plan? Is it the compensation committee or is it management? Who has the ultimate --

A The Compensation Committee has the ultimate responsibility for approving that, and they would recommend those to the Board.

Q Okay. And to your knowledge, is that what happened here?

A Yes.

Q Okay, thank you. I think that clarification is quite important, and I think we may have gone by too quickly.

A Sorry about that.

THE COURT: Okay. All right. I don't recall whether I told you you could sign off, Mr. Lowne, but you can sign off at this point.

And, Ms. Gartrell, you can as well.

MS. GARTRELL: Thank you.

MR. HUEBNER: Your Honor, is it okay to proceed with argument now?

THE COURT: Yes. It's my understanding that no one else had any evidence. So hearing no one, yes, we should go ahead with oral argument.

MR. HUEBNER: Okay. Thank you, Your Honor.

So, Your Honor, the 2021 KEIP, like the KERP, was designed to parallel last year's program that was approved by this Court after substantial negotiation with multiple

creditor groups and the, you know, not particularly contested, but somewhat contested hearing.

The adjustments and concessions that were negotiated last year were actually put in, and in many ways deepened even further this year, which I'll talk bout in a few minutes. And so it is important to note that like the 2021 KERP approved in July, the 2021 KEIP is essentially a renewal of the program.

And, Your Honor, it's a renewable program, but as we have now been discussing at hearings for over three years, programs that are 20 and 30 years old. These are not special bankruptcy bonuses, nothing of the kind. In fact, this is a degradation of the components of annual compensation that have been at this company, and frankly other companies in their industry, because the programs are entirely typical, for literally decades, except that they have been adjusted not in the executives' favor in the context of these Chapter 11 cases for various reasons. Right? We've already heard testimony about how the overall levels were reduced, the percentiles, the payout timing. And in fact, it's even lower market positioning than last year's programs that were approved. And that's the evidence in the record that was uncontroverted. This is a lower market position for these participants than what the Court approved last year after extensive negotiation with

creditors that got virtually everyone from the entire case on board or in a no objection situation.

Your Honor, it should be noted that, as I sometimes point out, it's easy to think of Purdue merely as a debtor or merely as a defendant. But Purdue is actually 23 complicated operating pharmaceutical companies. And the challenges of 2021 are almost unthinkable, running a pharmaceutical company making complex, and frankly dangerous products in COVID with quarantines and outages and on-site testing and supply chain disruptions and tremendous dislocation in the world.

And as Your Honor knows, very often the cash balance and the value of debtors dwindles by hundreds of millions or billions of dollars during the bankruptcy case. And one thing that I think gets lost in the maelstrom of litigation about the proper end of these cases and which creditors get what and all of that, is that the actual maintenance of the value of these enterprises, all of which is going to their victims, is due to actual human beings who come to work all day, every day, in circumstances that are very, very challenging to say the least.

Your Honor, let's now look at the numbers for a minute. The 2021 KEIP all in is $5.39 million for all five participants. That's what we're talking about. That's the annual award. And that's basically the same except for very

small annual salary increases in COLA and the like of the $5.21 million approved by this Court last year.

The 2021 long-term award is $1.71 million for all five, which is the same exact amount as last year. So in terms of COLA and purchasing power, it's actually, you know, in consistent dollars, it's actually less than last year. And all of the payments under the KEIP are subject to the metrics which I'll talk about in a few minutes.

It's important to note that the changes that were made in weeks of negotiations with the UCC, the AHC, and the MSGE are very material, and frankly, very much serve the goals that many of us are working to accomplish in these Chapter Elevens.

First of all, the payments are now not being paid until June 30, 2022. None of them. Not part of it in October and part of it in March. And for the last many decades, as you've been hearing for years as is typically in pretty much every company that has any sort of deferred compensation, it's often paid in February or March of the following year once you can sort of validate that the goals were met and the comp committee goes through it in detail. You know, the creditors ask that we essentially turn it into an extra duty plan to also hold people in connection with the transition into a new situation. And that was agreed to. And so that's not a small change at all.

Second, Your Honor, the long-term award, which I think was also quite typical, originally had a clawback only until 2022. Again, at the request of creditors, that was extended to March 15th, 2024. So, again, this plan is now doing sort of unheard of double duty as a sort of multi-year retentive element that is quite atypical in some circumstances and is unusual here.

Three, the Debtors agreed, and of course everybody saw it -- we always keep our (indiscernible), that goes without saying -- not to seek to assume the employment contracts of any KEIP participants. Right? What often happens at the end of Chapter 11 is that, you know, management that has stayed on through the case doesn't have their contracts rejected. They have their contracts assumed. Not all the time. Sometimes they are renegotiated. But we all know what this really means, right? Which is that if the creditors make the decision to release any of the participants post-emergence, they essentially are leaving not only with no severance during the case, which is a 503 issue, but no severance even for staying post-emergence to continue to assist with the transition. And certainly I think at least until June, if not far beyond given the structure of the timing.

And then we gave consultation rights to the AHC, MSGE, and the UCC with respect to measuring the performance

against the 2021 metrics and developing the metrics for calendar year 2022. And so, again, quite unusual. We are inviting sort of multiple large creditor group to collectively speak for pretty much all of, a huge (indiscernible) of the creditors in this case to help ensure that this is implemented correctly and to be involved in 2022.

And of course the revised order, Your Honor, goes without saying, includes the language that we all ended up coming up with in connection with Your Honor's ruling at the July 2021 KERP hearing, which essentially just makes somewhat more concrete and adds more procedure to the standard that we agreed to six hearings ago in early 2020 with respect to ensuring sort of (indiscernible).

So, Your Honor, we already discussed the percentiles, and so I'm not going to repeat that. But to say that this KEIP shouldn't be approved is essentially to ask five senior executives who work for 27 below the 25th percentile of compensation for their industry peers, which is probably something like 75 percent less than market comp or something like that. And I'm not even talking about -- which nobody contests the very material attrition laid out in the documents, the unfilled positions, the length of time to fill the positions, and the fact that we are now down to five insiders as opposed to eight and we have to keep

consolidating further work in the hands of fewer people because people leave and we can't replace them or choose not to replace them as part of cost saving and running this estate as efficiently as possible. And so fewer people are doing the work or more people, which frankly is another kind of totally unrecognized but very important structural feature of where we are.

So, Your Honor, the good news is there were only three objections, and some of them were -- at least one of them was pretty surgical. So let me turn to those now, Your Honor.

WE have objections from the State of Washington, from the NCSG, the so-called NCSG. Of course, 62 percent of whose members support the plan. And so I continue to find that name bewildering and not helpful at all. And of course the U.S. Trustee.

Let's start with Washington. Your Honor, the Washington objection, to say the least, much like the pleading they filed in the middle of the confirmation hearing that literally was a mid-hearing unauthorized brief in support of their objections, continues -- and we say this very rarely -- to be in our mind outside the scope of what we believe to be acceptable legal practice. Once again, they just put a whole bunch of facts in their pleading that if they were in a declaration, I would sure love to cross-

examine the witness. Because they just say many things that are untrue. They are flatly false. And there is no simpler way to say it, and I'm not going to sugarcoat it. So let's just talk about it.

First, they argue that because we have paid market compensation in the past and each year we've had a hearing, in which they did not directly participate. And we put on substantial evidence and the Court found that the compensation was market and appropriate and necessary. But somehow, they just say that because people got market compensation in the past, they should work for half off or two-thirds off at present, not because they were overpaid in the past, but because they were paid what was found to be reasonable and appropriate.

Second, Your Honor, Washington argues that because Purdue is going to become essentially a public benefit oriented company that in 2021, employees should work for substantially below market compensation. I mean, we disagree. I don't even understand the theory, and I think that it is not appropriate at all, including the fact that whatever guise this company is in, it is a very complex, multi-billion-dollar pharma company, among other things, making Class 2 narcotics. And it needs talented, appropriate executives. And the irony of course, and we'll talk about it in a few minutes, is that two of these

executives are purely technical folks. And this is exactly the kind of people we need the highest quality of to ensure the safety and efficacy and propriety of our products in our supply chain, including to continue to protect the American public with respect to products that are not simple, to say the least.

Third, Washington points to the compensation paid to the board of directors and in a really inappropriate sleight of hand attacks as a continuing practice of enriching insiders.

As Washington knows perfectly well, the majority of the Board was brought in new and clean, as we discussed at many, many hearings now, in 2018 to undertake one of the most difficult board assignments I think any of us has ever seen. And you need look no further than the (indiscernible) statement for the dozens and dozens of formal meetings which also obviously involve the less-formal thousands of phone calls, email communications and the like to bring the Debtors to where they are today. So the notion that board compensation even has relevance is challenging, to say the least. The notion that appropriate board compensation for a majority -- for a board, the majority of which is brand new and has worked, you know, basically as hard as any board any of us have probably ever seen in our careers I think has no relevance whatsoever.

Then, just to double down, quite astonishingly, with no facts, Washington says that the key participants are all released parties who aren't paying anything and they, "helped to craft and have pressed for the plan's implementation," and that's why they should work for less than half of market compensation. This is a flatly untrue statement that they had no basis making. It's just inappropriate in the extreme.

First of all, the notion that an employee of a debtor who takes on, even if were true, takes on part of the task of crafting and advocating for a plan that is profoundly in the public interest, supported by virtually all stakeholders and confirmed by the Court, should essentially be penalized for doing so. It is to say the least a proportion to which I think very few people would agree. But more importantly, it's just factually flatly false.

So as we laid out in our declarations and in our reply brief, with the sole exception of Mr. Kesselman, none of the five participants pressed for the plan's implementation. Just not true. And Mr. Kesselman, as we'll talk about in a few minutes, arrived in 2018. And this was exactly his job, which was to try to get control of one of the most complicated, litigious situations probably ever in U.S. history and help everyone get to the best possible

outcome. The notion that because he helped bring this plan together, you know, he should be economically penalized is just ridiculous.

And, Your Honor, if you look at the Lowne Second Supplemental Declaration at Paragraph 9, after going through in prior paragraphs the roles of Mr. Mancinelli and Mr. Lundie, who don't even live in or near New York and work down in operations, who obviously had basically nothing at all to do with the plan. Paragraph 9 also confirms that even Dr. Landau has never attended a single meeting with stakeholders to advocate for implementation of the plan.

So this canard of Washington that these five have been running around trying to get themselves releases and that there's something untoward going on here, he, frankly, owes an apology to people.

Next, Your Honor, as if this wasn't bad enough, Washington then claims as to both Mr. Kesselman and Dr. Landau, and I quote, "Even if they themselves did not participate in wrongdoing, they bear at least some modicum of responsibility for directing the actions and setting the culture of a company that has caused untold destruction and immiseration, a company that by its own admission engaged in a decades-long series of felonies."

As every party in this Court, including Washington, which has been involved from the first moments

of these cases, is perfectly well aware, Marc Kesselman joined this company in July 2018, after all the conduct at issue had occurred, after the entire opioid salesforce had been eliminated, after all detailing to prescribers and the like had stopped. He joined from a distinguished career in both public service at very high levels and in the private sector leading American companies, and was hired precisely because of extraordinary qualifications. To say that he had a role in setting a culture of wrongdoing for decades, it's just so irresponsible that it's just shocking to me that somebody felt comfortable even signing a pleading that says that.

As to Dr. Landau, Your Honor, just to be clear -- because this is stuff the Court knows, but somehow Washington's counsel maybe just forgot -- Dr. Landau was appointed in June '17 as CEO, after four years at a different company in Canada, a separate company. All of the conduct which Purdue admitted as part of the guilty please took place before Dr. Landau became the CEO. What Dr. Landau actually did as CEO quite soon after arriving was voluntarily stopping all use of sales representatives to promote opioids to prescribers. He supported and went to the Board and got them to agree to eliminate entirely the opioid salesforce. They discontinued the last of the speaker programs relating to opioids and ceased all

sponsorship of outside pain groups. Those are the facts in the record, and they have been in the record for over two years.

Now, the NCSG, to their credit, filed a much more limited objection and take issue with what Dr. Landau both did and did not do in 2021. And there are fair questions, but the answers are better than the questions.

The NCSG essentially says that Dr. Landau should work for a fraction of market comp because he did not insert himself into investigations of misconduct. We strongly disagree. In fact, Dr. Landau, having no involvement in the investigations, was in fact the most appropriate way to approach the situation. Dr. Landau was named as a defendant by two states and in several other civil lawsuits and has been the subject of personal attack in several KEIP hearings during this case.

While he vigorously denies the allegations against him, I think it would have been entirely inappropriate had DR. Landau involved himself to investigation when he was, stated simply, not disinterested. This is why companies have special committees and general counsels and outside law firms and boards of directors where people recuse themselves when they have a potential connection to the issues under consideration.

And as the Court knows perfectly well, and so do

the objectors, Purdue has been investigated exhaustedly by the Department of Justice and also by the attorneys general of many states. We're not going to repeat for the nth time at this hearing the scope of the information provision and the hundreds of millions of pages and the 400 parties to the protective order, including I believe all the states.

THE COURT: So could I interrupt you on this point? What is being done and by whom to determine whether there are current employees who should not be employees because of their role in the conduct to which Purdue pled guilty in November of 2020?

MR. HUEBNER: Your Honor, I need to choose my words very carefully, because this is really primarily a Skadden Arps, you know, civil and criminal sort of experts thing. But I'll say it like this, and I guess I will ask somebody from Skadden to please correct me if I misspeak.

First of all, all of the company's lawyers have been directed from inception to keep their eyes and ears open as they work on and review and produce tens and hundreds of millions of pages of documents so that if there are issues of wrongdoing of any remaining employees that come to light, those are to be immediately brought to the attention of the Special Committee.

Secondly, Your Honor, we, and I personally, have told and advised and requested of all of our creditor groups

-- who, as the Court knows, have done extremely, extremely extensive discovery of their own -- that if comes to their attention that they believe that in their reviews, which collectively the estate has paid probably well over a hundred million dollars for, that if anyone comes to their attention as being likely or potential wrongdoer, that that also must immediately be brought to the Special Committee.

Third, Your Honor, in connection with the KERP motion of course, a yet additional layer of review is now being done. And we always had in there from the beginning, we actually -- it was consensual from the start, the standard in all of the compensation motions that if it came to light that any employee triggered either of the two prongs of the standard -- which I don't want to state from memory because I would get it slightly wrong. But obviously there is a disgorgement obligation. That has been now sort of furthered at the Court's direction into kind of -- there is an entire process going on. In fact, there's a multi-hour -- I shouldn't say this, but there's actually a multi-hour Special Committee meeting later today on exactly this topic and on the work plan and the structure and the approach to continue to work on all of these issues.

So, Your Honor, the short answer is quite a lot is being done. And I would venture a guess to say that as the Court probably knows, Purdue has been downsized in terms of

reductions in force by something like 80 percent since 2017 when the company had a salesforce and was detailing. So, you know, the people who led all of this activity of the sales and marketing side by and large have been gone for years, as have all of the opioid salesforce people, perhaps with very limited exceptions. So there are reasons why it may not be such a surprise this Purdue and the few hundred remaining employees is just a radically different company than the Purdue of several thousand employees that detailed opioids in the period prior to March 2018.

So, Your Honor, let me ask my colleagues from Skadden. I'm not sure they were expecting to speak at a bankruptcy hearing. But if I have misstated anything about the way in which the multiple law firms have gone about their sort of involvement in this topic, I would ask someone to correct me. Because this is a very important issue. And I am, frankly, just a bankruptcy lawyer. And so I want to make sure that I'm not getting it wrong.

Okay. So, Your Honor, that I think is the response. I do want to reiterate something that I can speak to very directly. I have said to probably every major stakeholder group in this case, if you bring to our attention that you believe that somebody was specifically involved in wrongdoing and that turned out to be correct, they will be exited from this company faster than you can

snap your fingers. And that's always been our position. There is no safe haven for wrongdoers at this company, god forbid.

Your Honor, I see Mr. Troop has turned on his video. I'm assuming that it's not inadvertent, even though I guess I'm in the middle of argument, I guess I would see what he would like to add on this point.

MR. TROOP: Your Honor, if you don't mind, since Mr. Huebner just testified, I thought it might be a good time to (indiscernible). You reported facts. And therefore, you are the only person that I can ask the question of, and I'd like to ask it now so that I can think about it before I actually (indiscernible). And that is if any lawyer who is so tasked with identifying anyone with any misconduct, report anyone to the special committee (indiscernible).

MR. HUEBNER: Your Honor, obviously I don't have a choice but to, nor would I refuse to answer questions from the Court -- and, frankly, you know, since lawyers are not supposed to testify, I don't actually think that answering the Court's question is sort of, you know, a lawyer testifying. I don't actually think that expanding this into cross-examining me by other parties --

THE COURT: No, but I would ask the question as to whether there has been a report of anyone to the Special

Committee.

MR. HUEBNER: And, Your Honor, with apologies. Because I need to get this right. Report of anyone in connection with what?

THE COURT: Well, that had been identified either by counsel within -- an employee of the company or by a constituent in the case as being still an employee and having grounds for being fired because of misconduct related to the company's past practices.

MR. HUEBNER: Your Honor, I can tell you what I know, which is the best I can do. I do not know of any creditor having brought to our attention at all an employee and having them say this is someone we think should be terminated based on things we know. I don't even think that example was brought to us.

As the Court remembers because it was all public, in connection with last year's KERP hearing -- sorry, I'm going to actually amend -- I will amend my testimony, Your Honor. In connection with last year's KERP hearing, in fact, the UCC and the NCSG did raise questions about eight individuals. And we deferred the payment of the KERP to these eight individuals and further kind of investigation was done. Investigation may not be the right word, because Skadden hates it when I use the word investigation because I guess it's a technical thing. Substantial further work was

done. Detailed presentations were made, including after we got a document set from the UCC and the NCSG as to those eight. And ultimately, everybody got comfortable that the KERP payments could be made to those eight people.

So I guess the answer is yes, which is last year certain of our individual creditor groups brought eight individuals to our attention. We went and did the work. We had multi-hour calls with them on the eight individuals, presented our sort of findings on what we found and why we thought that some documents that they had brought to our attention in fact did not suggest or support potential misconduct. And everybody to my knowledge was satisfied, and they agree to have those final eight people get their KERP payments.

That's the only example I know of, Your Honor, where individual creditors brought people to our attention. We jumped on it immediately and ultimately got everybody comfortable. And had there been others, I assume the same progress would have obtained.

THE COURT: And are you aware of examples where outside counsel to the company or in-house counsel to the company raised similar types of issues with employees and whether they were looked into?

MR. HUEBNER: I think the answer is no, Your Honor. But again, I am a bankruptcy lawyer, and I was not

running the workstreams --

THE COURT: I understand. Even though you're the lead counsel in the bankruptcy case, you don't have the perspective on the whole case. I'm just asking you as to what you're aware of.

MR. HUEBNER: Yeah. I think the answer is no. I don't believe that -- primarily it would be Skadden and (indiscernible), who were the Special Committee counsel, brought to the Special Committee's attention people who were involved in the detailing of opioids in the pre-2018 era who were still employed with the company, where they believed that the conduct was problematic. Because, remember, under the KERP orders, Your Honor, we could not allow someone to get or keep their 2019 and 2020 KERPs, which it came to our attention that we believed that they violated the standard. And so people were all made aware of that in blazing technicolor. And I do not believe that anybody was brought to the Special Committee's attention.

We also, with respect to indemnification, Your Honor, have a similar process where before the Special Committee agrees to permit the indemnification of any present or former employees' legal fees, they first review it and form a view that they believe that they are, you know, likely to satisfy the standard for indemnification.

So there are a whole bunch of checks and balances

in place on the Special Committee side that I believe the Special Committee counsel and the Skadden folks and the like feel are appropriate.

THE COURT: Okay. I kind of interrupted you, Mr. Troop. I don't know if you had anything more to say on this point.

MR. TROOP: No, Your Honor. You covered the (indiscernible).

THE COURT: Okay. So why don't you go ahead, Mr. Huebner?

MR. HUEBNER: Just to finish up Dr. Landau for a minute. The numbers are that without the KEIP payments which bring him in fact to below 50th percentile even with the payments. But without them, he would be 55 percent below median compensation. He would be working for 45 percent of median compensation. And here, again, the only objection that we really see is that he didn't personally deal with investigations with potential consequences of those. And that's just not the role of a CEO in this fact pattern where the CEO himself is just simply not disinterested. In fact, if I were on the other side, I would be, you know, howling if I found out he was involved at all. He has no place in the room when these decisions and conversations and issues I think are being raised.

And, Your Honor, you've expressed several times

that the NCSG over the last couple of years has sort of shifted its theory as to why Dr. Landau should not be paid market compensation. And, frankly, each time you say, you know, you need someone to run the company, you need people here to sort of stay and maximize value. And, frankly, the judgment of the Compensation Committee and the Board was paying the CEO somewhat below median market compensation. And of course it's really much more below median when you consider the payment terms now, which are highly unfavorable and highly atypical and also turn into sort of a multi-month retention plan and a multi-year retention plan with the 2024. And so I know there is no way to work that into the math, but I think that these are actually well below the median when you consider that they're actually doing the job of multiple plans, but they are only one plan.

Your Honor, that brings us to the U.S. Trustee. So the U.S. Trustee again presents no evidence at all -- I know it's our burden and I'm not saying they had to present evidence, but they chose not to put on their own experts with their own testimony. They didn't depose anybody to my knowledge. They did ask a few questions of Mr. Lowne. And, frankly, I thought his answers were quite helpful in showing exactly what types of things were done to ensure that these were incentivizing.

So let me just quickly scan what is in the record

on this, as it is very important I think for all parties. All parties deserve comfort that people are being paid to do their jobs and do them appropriately in a way that hopefully pays for itself many times over and maximizes value.

So Mr. Lowne's sworn testimony is that the metrics are "ambitious, having threshold hard targets that are difficult to achieve both individually and when considered in combination". It's just uncontested testimony. Right? He testified that achieving the metrics requires "Diligent and committed efforts" and that at the time of their approval by the Board, the metrics were "Challenging, require extensive achievement, and presented a meaningful risk of not being met," even at the threshold. And it's actually not surprising at all that as we sit here much farther into the year, as the evidence also makes clear, some are not being met. Some are barely being met. Some are being met. Which is exactly what we would expect if metrics were properly set. Obviously if it was just target, target, target, target, that would suggest that the targets would have been set too low, which is not where we are. Which is why I think the updated declarations serve as the proof.

You know, the U.S. Trustee again, just kind of xeroxing its pleadings from prior years, again, just sort of calls the targets lay-ups. And it's just not what the

evidence shows. It's just not.

Your Honor, strangely enough, the U.S. Trustee in part attacks the metrics because the numbers are somewhat different than last year. But that's the way the world works. Every year, every time, in every company. The cashflows are different, the budges are different, the volumes are different, the profitability is different, the costs are different. The job of a board of directors is in fact to reset and customize the metrics for every single year. And among other things, Purdue is getting smaller, which is one of the reasons that some of the numbers are getting lower.

But other metrics are getting higher. You know, where products or companies or divisions are (indiscernible) better than expected, those metrics are higher than last year.

Similarly, Your Honor, I think Mr. Lowne already sort of testified about this both in response to Mr. Schwartzberg's questions and his declaration. We didn't drop any of last year's metrics. In order to make the plan -- and this is what the evidence is -- more industry-standard and have somewhat fewer metrics rather than industries with smaller metrics, they combined three of last year's metrics, Purdue Branded Business Operating Profit, Adhansia XR Operating Loss and Avrio Operating Profit, into

a single, consolidated operating profit metric. This was done for the salutary and entirely typical reasons set forth in the declarations.

So all these changes just show that we keep refining the plan as the years go by to best match the better business reality.

The last issue, Your Honor, is the question of timing of approval, which it's sort of like déjà vu all over again. We just keep having the same argument and the Court keeps ruling, and then we just keep seeing that argument again in the next pleading. And I just -- I just don't really understand it.

The notion that the post-emergence board should deal with the 2021 compensation plan is just completely misguided. In fact, if I were a board member that came onto a company in 2022, I would refuse to do that. I wasn't there, I didn't set the goals, I didn't measure them, I couldn't assess the people. For all we know, none of those people might even be there by the time a new board is seated. So to say that a new board should responsibly or could responsibly even accept that obligation I think misunderstands what a serious board would and would not agree to do.

And with respect to timing, Your Honor, we've now talked about it, I think, seven hearings. You know, it is

typical in this company and all companies for the metrics and the plan to be baked and done near the end of the first quarter of the calendar year. You need to sort of finish up the prior year and get an assessment of how things turned out and what the final numbers are, audited or not, and then early enough in the year to incentivize people and know what the right numbers are, you announce that calendar year's plan.

You know, we filed this rather late in the year and we adjourned it multiple times specifically to get broader creditor support and to give us time to negotiate and make the multiple very material concessions that I described before that were done at the request of creditors. And more importantly, Your Honor, I only need to ask the Court to look at Pages 55-58 of the Court's own ruling from the July 29, 2021 KERP Hearing, because this exact argument verbatim was made six weeks ago and for the, I think, sixth time or so, the Court ruled on it and found that the timing of the motions, which actually came very late in the year, and then their actual hearing, which was held even far later yet in the year, precisely to allow for appropriate commercial negotiations and concessions in no way detracted from the propriety of the programs or their timing but, in fact, supported them. I think Your Honor ruled for about four pages on this topic, and I have to say, and it's a

little bit frustrating that we're discussing it yet again, given that I think we already have a ruling from the Court.

So, Your Honor, I'll leave it at that. Obviously, our initial motion had a lot in it. Our reply brief on the KEIP had a lot in it. We have multiple declarations. And there are only three objections. I think the primary creditor groups, of which Your Honor knows there's something like 11, have no objection. We negotiated this thing and made very material changes at the request of the UCC, AHC and MSGE. And we're at or below median, even with the full program, and we ask that it be approved. Your Honor, I'll hopefully have little to no rebuttal but I'd like to save a little bit of time based on what the objectors argue. And, of course, I'm happy to answer any questions from the Court.

THE COURT: Okay. Well, why don't I hear from the objectors?

MR. SCHWARTZBERG: Hi, Your Honor, Paul Schwartzberg from the U.S. Trustee's Office. Is it okay if I go first?

THE COURT: Sure.

MR. SCHWARTZBERG: Thank you, Your Honor. Your Honor, this is the third motion by which the Debtors seek authority to pay compensation above base salary. And in this particular motion, the Debtors seek to pay, I believe, up to 7.5 million to five insiders pursuant to a Key

Employee Incentive Plan. However, before additional compensation could be paid, the Debtors must pass a threshold test to demonstrate that the payments do not violate Section 503(c)(1). That the payments are not (indiscernible). Only if this is passed can the Debtors turn to demonstrate the facts -- demonstrate the payments are justified by the facts and circumstances of the case such as what is market compensation? And as Mr. Huebner said, the burden is on the Debtor to demonstrate that this plan is not a retention plan.

Now, I know Mr. Huebner had indicated that this is a removal of past programs but the numbers chance in each program and we're here testing the numbers to make sure that it is a true incentive plan and not a retention plan. And the Debtors set three metrics to be met for awards to be paid: The value creating metric, the innovation and efficiency metric and the people and culture metric.

First, Your Honor, for the innovation and efficiency metric, the threshold level for the award (indiscernible) is not disclosed. Only the target level is disclosed. Therefore, it's impossible to determine if the minimum metric that needs to be met before payments are made... In fact, 75 percent of the payments are being made at this threshold level, which is not disclosed.

Second, initially, no historical information --

financial information is provided to compare the metrics with the past results. Mr. Huebner had indicated that Mr. Lowne had testified that these are actually hard metrics to achieve, but those are conclusions. We need to see the numbers to make informed decisions.

And, in fact, for example, for the consolidated total business operating profit, I believe that's the largest metric in the innovation in the performance metric -- we're not providing the historical information to determine if the $69 million target is, in fact, an incentivized target.

THE COURT: Can I interrupt you on this point?

MR. SCHWARTZBERG: Yes, Your Honor.

THE COURT: Section 503(c)(1) addresses, in a way that makes it essentially impossible, a transfer to an inside for the purpose of inducing such person to remain with the Debtor's business. Right?

MR. SCHWARTZBERG: Yes, Your Honor.

THE COURT: And then says in (c)(3), which is the basis that the Debtor is moving under, that other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances also cannot be made.

So, I guess my question is -- you referred to "base salary", right?

MR. SCHWARTZBERG: Yes, Your Honor.

THE COURT: So, you agree, I guess, that "base salary" is not a transfer to induce someone to remain with the Debtor's business, right?

MR. SCHWARTZBERG: Yes, Your Honor, it's very complicated.

THE COURT: Because if you're not paid a salary, obviously you will leave because you're not being paid. But that's not what Congress had in mind, right?

MR. SCHWARTZBERG: I believe what they had in mind was, as we indicated, bonuses, awards, things above a person's base salary.

THE COURT: Well, that's two different things, right? Because a bonus -- and this is what Congress, I think, really was focusing on -- can be a bonus to stay, i.e., the practice that developed now many years ago where debtors sought stay bonuses for executives simply, you know, that they hadn't awarded before -- bonuses had not gotten -- executives had not gotten such payments before the bankruptcy, and the rationale for the bonus was that it was hard to work in a bankruptcy environment and so, therefore, they should have this increase.

But the evidence is really quite clear in this matter, as it has been when compensation levels for 2019-2020 were sought, that the actual compensation for

executives of these companies for decades included a contingent payment as well as a "base salary". And it was only when you have both of those together, as the evidence shows, that you actually are in the median for your competitors.

To me, that doesn't seem like the type of bonus, retention bonus, that Congress is addressing in 503(c)(1). To me, it seems like a payment that is, yes, it's required by people to be competitive and not to go somewhere else but it's essentially part of their salary.

MR. SCHWARTZBERG: Your Honor --

THE COURT: Do you have any cases or legislative history to support otherwise? That in a context like this, as opposed to where someone gets something that they had never gotten before and it was tied to just staying in place in the bankruptcy case -- but, rather, an element of compensation that had always been there and is necessary to make you in the median for people in your industry. That's somehow a bonus, as opposed to a risk you're taking that you won't get enough to be in the median?

MR. SCHWARTZBERG: Well, Your Honor, I'm looking at the section -- or the statute and it says transfers. So, we believe this is a transfer. And that's where we've come up with that.

THE COURT: But so is a base salary. So is base

salary. And if you need both to be in the middle and you're actually running the risk with the portion of the compensation to get to the middle, i.e., that you don't meet the targets, to me that doesn't seem like getting a leg up. It seems like staying in the middle or even risking being before the middle.

MR. SCHWARTZBERG: Well, Your Honor, we believe you don't get to (c)(3) until you've passed the (c)(1) test.

THE COURT: I understand. But how is the (c)(1) test applicable to these facts? I understand clearly that if someone is getting what I would view as a true bonus just to hang around or just to do their job, that they haven't gotten in the past but they're getting it now in a bankruptcy case -- because, as courts were told in the '90s, before this statute was enacted, you've got to incentivize them, Judge, because it's really hard on the bankruptcy case -- I understand your point completely. I think that's what the statute addresses.

I'm having a very hard time seeing how it addresses a situation where the evidence shows that this is -- this is actually necessary to get them to the middle of compensation and that the so-called base salary is way below the middle.

MR. SCHWARTZBERG: Your Honor, two responses: One, I guess I'll harken back to what Mr. Huebner has said.

The timing of the payments was put out to now June 30th to ensure that they get or stick around until post-emergence. So, that --

THE COURT: Well, clearly, that's something that people want, is that they'll stick around. Yes, that's true. That is true. That's fair. But that just puts another risk, another burden on the employee, right?

MR. SCHWARTZBERG: Well, I think the fact that they're being timed that way because they stick around is another evidence or demonstration that they are retention payments.

And, second, Your Honor, we're turning to the chart that I went over with Mr. Lowne -- it appears they're going to get a bonus for everything except for one, or an award for everything. And, in fact, he testified are the ones that they're not going to meet. If they meet them later, after the target, they still get an award. So, it seems like these are less incentivizing and more guarantee paid.

THE COURT: I agree with you to some extent. I think that the targets are incentivizing, but the threshold, notwithstanding Ms. Gartrell's testimony that this is also common in the industry -- in fact, usually the threshold can be lower -- is more akin to, you know, not as hard an achievement.

But, again, if the -- if the outcome is that you get paid what is the median in the industry, with a risk that you don't get that even because you're below the target and perhaps even below the threshold, I have a really hard time seeing that that is a bonus. It's a bonus in the sense that you get more than your base salary but it's not a bonus over the people who are working as the head of the equivalent of Rhodes Pharma for some other pharmaceutical company or the CEO of that company. It's just -- it doesn't really seem like a bonus to me. It's a bonus in the sense that you have some risk that if you don't get it, you'll get paid less. But it doesn't really -- it seems like compensation.

MR. SCHWARTZBERG: Your Honor, we believe it's a transfer. And we --

THE COURT: Well, so is salary. Salary is a transfer, too.

MR. SCHWARTZBERG: But that would make the statute -- some have said nonsensical if it included salary, base salary. I think they're talking about transfers above base salary. You can call them bonuses, you can call them awards --

THE COURT: It doesn't say transfers above base salary. In fact, the language could actually apply to transfers that include base salary. I don't think Congress

meant it that way but if you take that meaning of a transfer, clearly every dollar that you receive is "for the purpose of inducing such person to remain with the Debtor's business" -- otherwise you wouldn't have an HR Department. You wouldn't have a business.

So, it -- I -- look, I just -- it's -- it's easy, too easy, in fact, to say that an incentive program is always a bonus. It actually could be a risk and not a bonus. It's a risk in that -- or if, A, at most, if you achieve the targets, you get paid market compensation because you may not achieve the targets. You never have a chance of getting above market. At best, you can get two market.

I mean, it's just -- I think -- there's a lot of rhetoric around these types of programs and I guess, to some extent, rightly so. It really was pretty outrageous that before this statute was enacted, firms would say to their managers, you know, you can actually make more in a bankruptcy. We'll call it a stay bonus and we'll pay you more. Congress dealt with that.

But if someone's being paid on essentially a combination of flat salary and if you get the metrics, median compensation, it's hard for me to see that that outrage that Congress reflected in (c)(1) really would apply.

MR. SCHWARTZBERG: Your Honor, I see where you're going so I just would like to get on the record just that our concern is that the thresholds were not disclosed, in fact, even today. The historic information to compare it, rather than the conclusions by Mr. Lowne were not -- were not set forth. And then, as he indicated, it appears everything that's in his table on Page 4 of his declaration, even if they miss the target that's listed (indiscernible) --

THE COURT: No, I actually don't think he said that. I think he said that the -- let me turn to his thing -- the Adhansia 10 percent wouldn't be met and that overall, however -- and I do agree with you on this point -- it's above 90 percent of what the target would provide.

MR. SCHWARTZBERG: Yes, Your Honor, everything but Adhansia was going to be met, even if it didn't hit the target.

THE COURT: Well, at a threshold but not the whole -- not the whole target.

MR. SCHWARTZBERG: Yes. But we don't know what that threshold is, Your Honor.

THE COURT: Right. Okay.

MR. SCHWARTZBERG: Thank you, Your Honor.

THE COURT: Okay. All right.

MR. SCHWARTZBERG: I'll defer to Mr. Gold, Your

Honor, for the last (indiscernible) --

THE COURT: Okay. All right.

MR. GOLD: Thank you, Your Honor. Matthew Gold, Kleinberg Kaplan. Can you hear me?

THE COURT: Yes and I can see you fine, too.

MR. GOLD: Okay, thank you, Your Honor, and I apologize for the unstable interface. Simply I have nothing --

THE COURT: It just looks like a 1970s Italian movie, it's fine. It's like Vittorio De Sica.

MR. GOLD: I would be honored to be put in that presence, Your Honor. In any event, I have nothing to add to our papers on this matter and we rest on that.

THE COURT: Okay. Okay.

MR. TROOP: Thank you, Your Honor. Andrew Troop for the Nonconsenting State Group. Your Honor, we are left with the compensation program the way it was presented to us, with base salary and the consented compensation. And we're here today to object because a significant portion, as we set forth in our statements -- this company's (indiscernible) --

THE COURT: I'm sorry, you're cutting in and out, I'm afraid, Mr. Troop.

MR. TROOP: I'm sorry, hold on one second, Your Honor. See if that's better. We're having some air

conditioning issues today so I thought it as better (indiscernible)... Your Honor, as I was saying, we've heard from the beginning of the (indiscernible) again today that the fundamental purpose of this Chapter 11 was an evolution, an evolution of this company and its culture, and its culture with respect to its practices.

There is responsibility for that culture. That culture, as we established, at the KERP hearing in July includes ensuring that participants in this case, the retention plan -- in that case, the retention plan -- did not, through their own inaction or misconduct advance the wrongdoing of this company over time or during the course of business. You made that clear in 2019 as well.

But we've learned that notwithstanding that instruction from 2019, the special committee is meeting just today to take on the responsibility of ensuring that bonuses, however described, are not paid out and really to evaluate the workforce in light of this company (indiscernible) misconduct. It's not a defense by the Debtors to argue that the criminal investigations into the company took the place of the company's own responsibility to ensure the integrity of its workforce against this culture. And it is no defense for Dr. Landau to say that parties would have complained had he inserted himself into -- I believe the word that Mr. Huebner used was

investigations of misconduct -- the words. And accepting that as true, as the CEO, Dr. Landau still had responsibility to make sure that the process was in place.

Dr. Landau could not rely, should not have relied, solely on (indiscernible).

THE COURT: I'm sorry -- I'm sorry, should not have relied on?

MR. TROOP: On legal counsel being engaged in criminal investigative conduct, their own counsel, to substitute for the company's own responsibilities. And at the end of the day, they were his responsibilities as CEO.

In some ways the objection by the Debtor is that we were too surgical, we were too surgical in focusing on Dr. Landau. But at the end of the day, as I said, he is the CEO and he could've directed the appropriate conduct undertaken by this company in response to what I understood their directives from Ms. Wood back in October of 2019, and which we learned from his own testimony during the 2004 -- the 2004 depositions in this case, that the company did not, in fact, undertake any (indiscernible)...

They said they didn't do it, notwithstanding the Practice Fusion deferred compensation program, which (indiscernible) identified participation by people at Purdue. They did not --

THE COURT: Well, can I interrupt you? Because I

guess, given the seriousness of what your objection asserted, I would've expected more a cross-examination of more of an analysis here of who did what. But, to your understanding, is there anyone at the company who was identified with the Practice Fusion admissions or activities?

MR. TROOP: If we're going to use Practice Fusion, Your Honor, I believe an unnamed Purdue employee identified as a brand manager was identified. And if we'd matched up that person correctly, that person is still at the company.

THE COURT: And is that one of the eight or is that someone else?

MR. TROOP: That was one of the eight. But if you recall at the time, Your Honor, we were instructed -- in fact, in part, I will give Mr. Huebner credit. Yes, our arguments have modified over time in response to what's happened in the case and in response to your focus on these hearings. But at the time, you may recall, Your Honor, it was that if someone committed -- if someone did something criminal, right, that's what we should be focused on. And we worked on that claw-back language, which really focused on criminal more than anything else.

We continued to raise our objections that the company had an independent obligation. And as time has passed where practice (indiscernible) practice

(indiscernible) agreement (indiscernible) by the company's own (indiscernible) -- and, Your Honor, there's another guilty plea in Practice Fusion by an individual but it's not in front of you, which also talks about for the -- which suggests that there was a process that should have been undertaken by the company to do what it obviously wanted to do.

And at some level, Your Honor, regardless of the level of the investigation that the parties were able to do, there were whole swaths of documents (indiscernible) that did not... There was a level of investigation allegedly undertaken by the (indiscernible) there was an investigation undertaken by the Special Committee where we did not receive a fair analysis, we did not receive (indiscernible) and it seems that the responsibility -- if we went outside of bankruptcy, Your Honor, this responsibility would clearly have been on the company and there'd be no defense that would've said creditors can do investigations. Creditors had access to 2004 examinations.

THE COURT: Can I -- again, I didn't hear you clearly. I am having kind of a hard time hearing you. I don't know if other people are, too. But I think you said that there was some separate work on this issue by the Special Committee that --

MR. TROOP: No, Your Honor. What I was saying is

that there's been a lot of talk about the access to information which creditor constituencies (indiscernible).

THE COURT: Right.

MR. TROOP: I think that it continues to pale in comparison to what was available to the Special Committee, including, Your Honor, information that we know was produced to the Department of Justice, which was not produced to us under -- because the Department of Justice, among other things, objected.

Your Honor, at the end of the day, the question is whether or not you establish the culture of a company with a responsibility that it's (indiscernible) based. And for us, that is -- that is the fundamental issue here. I think that our pleading was clear about that, I hope that it's clear to the Court about that, and otherwise we will rest on our papers --

THE COURT: Well, I think the issue that the Debtors have raised with your contention, which I don't think they disagree with the underlying premise, which is that Purdue's culture that existed, you know, through some period in 2017 needed to change -- is whether and what role Dr. Landau should play in that. The Debtors say that, particularly given the Special Committee and the role played by outside counsel in the criminal investigation and Dr. Landau's own inherent conflict, given that he was named in

some complaints, meant that Dr. Landau, although the CEO, is not the person to take the lead on this point but, rather, it would ultimately depend upon the board as advised by counsel. What is your response on that point?

MR. TROOP: As I said, Your Honor, perhaps we were too narrow.

THE COURT: Well, but the issue before me is his compensation where there is, again, a carve-out. So, you may have been too narrow but I'm just focusing on him at this point.

MR. TROOP: Understood, Your Honor. So, Your Honor, what's the best analogy? Your Honor, there is a distinction between being involved in an -- I'm going to use the word investigation or a review (indiscernible) and making clear that that review has to be undertaking, even if you can't do it yourself for all the reasons the Debtors have articulated, but accepting them as truth for these purposes, it's still the CEO's responsibility to say we need to make sure -- we need to make sure that we are reviewing (indiscernible) in plans and reviewing --

THE COURT: Okay, no, I understand that point. But I guess what is -- what is your basis for saying that that isn't -- or hasn't been properly addressed?

MR. TROOP: The basis, Your Honor, includes the deposition transcript that was attached to our KERP

objection, for one.

THE COURT: No, that says that he doesn't know about it. And that's the first part of my question, and you answered that. But I'm trying to figure out whether it hasn't been done.

Clearly, Dr. Landau has not been involved in it and I don't think there's any testimony that he directed some sort of inquiry. But the issue is, I guess, ultimately, whether there has been a failure to do it.

MR. TROOP: Well, Your Honor, I can only look at some facts, right, that we have, and those facts are that, to my knowledge, no one's been disciplined. Part of his testimony was that no one was disciplined and no one was fired. The second part is that they were -- if I understood Mr. Huebner earlier, I understand that for the first time the Special Committee is leading the institute process. And if I misunderstood Mr. Huebner, I'm sure he'll correct me.

But it is -- we are unaware... For example, Your Honor, when we raised this objection (indiscernible) no one advised us that there was process underway or in place that undertook a review. No evidence was presented in connection with the KERP, to my memory, that, in fact, any such process was employed. What we heard then as we heard today was that well, there were criminal investigations going on and people were looking -- and outside lawyers were looking at lots of

documents. And that, Your Honor, doesn't mitigate the company's internal responsibilities with respect to its culture and its future, which doesn't line up with the criminal law. It doesn't line up with the... So, Your Honor, I don't --

THE COURT: Well, I mean, the Debtors have identified many steps that I think were quite far-reaching that Dr. Landau took to change the culture, right? So --

MR. TROOP: So, Your Honor --

THE COURT: I guess -- I --

MR. TROOP: Your Honor, let me use this as not a perfect example, okay? In the last monitor report, the monitor reports on the fact that in Customer Service, someone -- someone reached out directly to (indiscernible) rather than referring. And the Debtors jumped all over that. I don't want to take anything away from the Debtors when they learned about it.

But it reflects a cultural question. It's a cultural question. How do you -- how do you make sure the (indiscernible) that these (indiscernible) are more than second nature to everyone within the organization? And, Your Honor, this was the vehicle in which this issue came up. And, as I said, at the end of the day, when you're the head of the organization, it is your responsibility. If you can't do it yourself, then make it very clear that

(indiscernible).

THE COURT: Okay.

MR. TROOP: Thank you, Your Honor.

THE COURT: Okay.

MS. IMES: Your Honor, may I be heard? Linda Imes, for Dr. Landau?

THE COURT: Okay.

MS. IMES: Thank you for hearing me, Your Honor. I appreciate that this is the Debtor's motion, not Dr. Landau's, but the objectors have challenged both his leadership of Purdue and his integrity. And Dr. Landau is a highly principled man who has always been committed to doing the right thing at Purdue, and we just can't sit by while they make unfounded smears against him, Your Honor. So, with your indulgence I'd like to address two main points, one of which Mr. Huebner touched upon.

First of all, there's no evidence whatsoever to what Mr. Troop just alluded to that somehow his inept or misconduct advanced any wrongdoing. There's not a shred of evidence to support that. Similarly, Washington is trying to link Dr. Landau to the misconduct to which Purdue pled guilty by saying that he bears responsibility for directing actions and setting a culture that resulted in a decades' long series of felonies.

Yet, number one, Dr. Landau has testified under

oath twice, once at his 2004 deposition where anyone could've asked him any question they wanted to in this case, and once before Congress that he did not participate in and was not aware of that criminal activity. And this is -- Your Honor, it's in the testimony that's attached to the Nonconsenting State group's motion at Page 85, 87 and 91.

Secondly, the timeframe for the criminal conduct that Purdue admitted to in its 2020 guilty plea preceded Dr. Landau's onboarding as CEO of Purdue. The long and short of it, Your Honor, is that he was not CEO during the period of (indiscernible) conduct. And for four years of that period of time, he worked at a separate company, Purdue Canada in Canada.

So, there's not a single action that he directed that resulted in the committing of felonies. Also, since they've alluded to a decades' long series of felonies, I gather they're referring that to the 2007 plea. What Your Honor should know about that is that Dr. Landau had no responsibility for the sales and marketing functions at this time, and he had no involvement with any of the conduct at issue in the 2007 criminal plea. That conduct that was alleged occurred before July 2001, when he had been working as a junior employee in the R&D for less than two years. So, there's just no truth at all to the aspersions they're trying to cast upon Dr. Landau.

The second point I wanted to address, Your Honor, was the one that you raised about the culture needing to change. One of the things Washington talked about in its allegations was that somehow Dr. Landau set the culture of the company that enabled this criminal activity. And, again, that's just completely false. And, in fact, what Dr. Landau has done is he's been a problem-solver and a change agent. And I'd like to just run through some of the things that he has done to change the culture and business of Purdue.

Your Honor, much of this is set out in the written statement that Dr. Landau presented to Congress in December of 2020 at Page 2-3 and 4-5, and there's a link to that referenced in Mr. Huebner's brief. But among the many things he's done for the company since becoming CEO in June of 2017 are the following things:

First, he ended the company's promotion of opioids by sales reps to prescribers, and he did this without being asked to do so or directed by anyone, including regulators.

Two, he eliminated the company's entire opioid salesforce. He discontinued the last of the company's opioid-related speakers programs. He ceased the company's sponsorship of all outside pain groups. He assembled a new management team. He renewed the company's focus on R&D. He prioritized the advancement of three programs intended to

address specific elements of the opioid crisis, namely, the approval and availability of buprenorphine and naloxone; the development of an over-the-counter version of intranasal naloxone, and the development of injectable minalfene. These are obviously all important to NewCo as well.

And since September 2019, he's paid a crucial role in driving workforce productivity, maintaining employee morale, limiting attrition as much as possible, and even recruiting new talent.

So, Your Honor, there's just absolutely no truth to the notion -- and it is merely someone's notion -- that somehow Dr. Landau was part of or contributed to a corrupt culture that promoted wrongdoing. It's just not so.

And one final point, Your Honor, is that -- unrelated to what I was just talking about -- is that -- and this follows up on a conversa -- question you were asking Dr. Lowne about diversity and so on. It's my understanding that Dr. Landau created the Presidential Committee on Diversity, Equity & Inclusion at the company over a year ago, and that he communicated that as a high priority for the company.

As for the alleged failure for Dr. Landau to conduct an investigation, I think Mr. Huebner addressed that and made the critical points and I gather that Your Honor has followed up on those observations. Unless you have any

questions, Your Honor, I have nothing else.

THE COURT: No, that's fine. Thank you.

MR. HUEBNER: Your Honor, a few quick things from my end, and I will be pretty brief. Your Honor, first with respect to the United States Trustee, candidly, if Mr. Schwartzberg believed that the many conclusion in our four declarations were not sufficiently supported or granular, then he probably should have asked for a deposition because that's what someone does when they think that a witness can be sort of like, knocked over by incisive questioning.

The fact that he asked Mr. Lowne to recite a series of highly specific numbers from memory with no prior notice in open court I really don't think provides any support whatsoever to any sort of argument that these -- the conclusions that these are ambitious, challenging, real targets gets trammeled in any way whatsoever.

The second, Your Honor, and you said it now at about five hearings. There was a very tawdry world, in which I'm glad to say I don't think I ever participated, where people got big extra bonuses in Chapter 11. That is not this and has never been this. This is regular annual compensation that's been going on for 30 years, split into a part paid biweekly as base salary and a part that is essentially deferred and put at risk to get them to median comp if it goes as expected. It's not extra, it's not new,

it's not bonuses, it's not retention, except for one thing. And you want to talk about returning bad -- good for bad -- it's just completely unbelievable that we were originally going to make these payments essentially, you know, in March of 2022, as has been done for decades. And three of our creditor groups said, no. We don't want you to pay it until June because we want buy one, get one free. We also want to have to hold them until July 1st.

And now the Trustee is saying because we agreed to accommodate the needs of our priority economic stakeholders, this is now an illegal retention plan? You know what, Your Honor? I'll make the offer right now. If people would like us to go back to paying it in March exactly as we proposed, we would be delighted to. But to say that it's been made unlawful because we made a concession to creditors to benefit the estate and increase its value, I mean, it's just -- you can't even make this stuff up.

Your Honor, with respect to Mr. Troop's comments, I just -- I found myself bewildered as he was talking. Because, essentially, he actually did testify incorrectly at great length about what Purdue, and the board, and the Special Committee has done and not done, which was not in his two-page objection that said one thing only, which is Dr. Landau did not oversee investigations or personally fire or discipline people. And somehow out of the blue we're in

a referendum on whether the culture of Purdue has sufficiently turned over.

So, let me be very clear because this is actually -- while inappropriately raised, is actually quite central to everything some of us are trying to accomplish. First of all, the notion that one person in Customer Service appears to have made one phone call that may not have been okay and that everyone agrees that the company, and the monitor, and the compliance function jumped on instantly, and this is somehow evidence that something is still not right? I mean, please. Seriously.

Like, to even suggest that in the case of this publicity as evidence of impropriety or a not completely clean culture as opposed to the opposite -- you know, I invite anyone who wants to read every single monitor report, which have been filed exactly on scale, about the extraordinary compliance, and the extraordinary change in culture, and the extraordinary safety ad propriety in so many areas.

Second, Mr. Troop has grossly misheard me and misunderstood me, and he repeated it multiple times. I did not say they're meeting just today or today for the first time. I said, ironically, there is also a multi-hour meeting later today on this exact topic. This is not the first meeting, it's not the second meeting, it's not the Nth

meeting -- well, I guess it is the Nth meeting because that can be any number. The Special Meeting has been on these issues for years, and I already described at some length, because we ended up going very far afield from one objection on one person on one part of their compensation, in connection with things like indemnity, the Special Committee demanded voluminous information from the Debtor's primary law firms to be comfortable that before anybody got indemnified, who was likely to be appropriate.

I described to Your Honor, again, impromptu and with some trepidation, the many implicit layers of netting and review that had been in place for a long time. We didn't put the onus in creditors. We said, and in addition to all the things we're doing, if you see anything, then your hundreds of million -- hundred million dollars of legal fees' worth of review that suggest that a wrongdoer is still at the company, bring it to our attention and we will jump on it right away. It's an additional layer of care for people who are highly adversarial to the old Purdue and with very good reason, and had every incentive in the world to help us all ensure that no wrongdoers remain at the company.

Your Honor, with respect to Practice Fusion, to be clear, Mr. Troop I assume is right in matching up that one person who was mentioned in a document is still at the company. That doesn't mean that that person was a wrongdoer

or satisfied the original standards under the KERP. Those are all things that the Skadden folks and the Special Committee had been looking at consistently, and there obviously a tremendous amount of discussion about Practice Fusion both when the information statement or whatever it was, indictment or plea agreement with Practice Fusion itself came out. And then obviously in connection with the negotiation of Purdue's own guilty plea.

Your Honor, at the end of the day, the NCSG, again, very inaptly named, is really the only objector that is making these, I think, really dangerous and unfounded, unexpected claims that somehow the culture of the company has not been sufficiently changed. We have a UCC, we have an AHC, we have an MSGE, we have a huge group of PIs, we have a group of tribes, we have a group of hospitals, we have the MAS babies, we have the MAS baby monitorings, we have Main Justice. No one is joining Mr. Troop in his extensive musings to this Court that maybe things aren't fully corrected yet, because it's not true and it's not fair. And to pull out of the blue this one person in Customer Service dialed a phone number and maybe that should be looked into, it only proves the opposite, which is there are microscopes, and magnifying glasses, and multiple processes going on to ensure that this company is all the things that the Debtors and, frankly, the employees

drastically reduced the number from the company this once was are working so hard to deliver to the American people.

What's actually up for today, and with this I'll close, is a compensation motion for five people, two of whom are in Technical Operations, one of whom is a finance executive, one of whom is a brand new general counsel, who is basically Mr. Clean with years of government service at the Department of Justice as the general counsel of the Department of Agriculture and other august positions, who was brought in to help figure this out and make it right; and a CEO who is doing his job. He is where he is supposed to be and he's not where he's not supposed to be.

And we have nothing that I think -- you know, what's presented today that comes close to suggesting that paying basically below median compensation for the five people who have worked so hard to preserve the actual value with the cash balance of a billion dollars should not be approved. That's all I have, Your Honor.

THE COURT: Okay, thank you.

MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg. Could I make two quick points, Your Honor?

THE COURT: Okay.

MR. SCHWARTZBERG: The first, Your Honor, you had some questions regarding salary and 503(c). I just wanted to point out, Your Honor, that salary is referenced in

503(b) and then 503(c) the indicates, notwithstanding Subsection B. So, I wanted to point that out, Your Honor.

And, second, Mr. Huebner had asserted that we did not provide any evidence, but I just wanted to also point out that we did file an objection that indicated for, among other things, there was no historical information. And the Debtors filed a response and it didn't include it. And that's why we had to cross Mr. Lowne today, Your Honor.

THE COURT: All right. Well, the Debtors do have the burden of proof but notwithstanding the resources of your office, there are such things as depositions.

Okay, I'm assuming that that closes oral argument. I have before me a motion by the Debtors to obtain approval of their 2021 Key Employee Incentive Plan, which would apply to five current employees of the Debtors that would qualify as insiders under the Bankruptcy Code. The Bankruptcy Code in Section 503(c)(1) establishes an extraordinarily difficult, if not de facto, impossible standard that must be met before a Debtor may make a transfer to or incur an obligation for the benefit of an insider of the Debtor for the purpose of inducing such person to remain with the Debtor's business. 11 USC, Section 503(c)(1).

That subsection is premised by the phrase: Notwithstanding Subsection B, there shall neither be allowed nor paid -- and then the language that I just quoted. Mr.

Schwartzberg for the U.S. Trustee is correct that 503(b)(1) includes as an administrative expense wages, salaries and commissions for services rendered after the commencement of the case. But, again, 503(c) is introduced by notwithstanding Section B, which would seem to indicate that if one read the provision as broadly as I think the U.S. Trustee might be trying to, it would not even -- it would apply even to and notwithstanding the allowance of wages, salaries and commissions if they fit into a transfer made for the purpose of inducing a person who was an insider to remain with the Debtor's business.

The courts have not adopted that interpretation of Section 503(c)(1), largely because it makes no sense, but also because they have recognized almost since the enactment of 503(c)(1) that all payments to employees and executives included within that definition have some retentive effect. Obviously, if you don't receive wages, salaries and commissions or if you're not paid market rates, then generally you will, as soon as you can, leave the employ of your employer and find a better paying job or a more satisfying job elsewhere. In re Dana Corp, 358 B.R. 567 671, (Bankr. S.D.N.Y. 2006).

The Debtors acknowledge that the five people that are covered by the Key Employee Incentive Plan are insiders under the Bankruptcy Code definition, found at 11 USC

Section 101(31). And therefore they seek allowance or approvals, rather, of the KEIP under 503(c)(3), which applies to other transfers or obligations that are outside the ordinary course of business, and does not permit them if they are not justified by the facts and circumstances of the case. 11 USC Section 503(c)(3).

Otherwise, because they would be out of the ordinary course of business, the Court applies the general standard applied under Section 363(b) of the Bankruptcy Code, i.e., whether the proposed transfer or obligation is a proper exercise of business judgment. In re Velo Holdings, Inc., 472 B.R. 201 (2012) (Bankr. S.D.N.Y. 2012), and In re Borders Group, Inc., 453 B.R., 459473 (Bankr. S.D.N.Y 2011), and In re Dana Corp., 358 B.R. at 576-77.

In that case, tying his analysis to the particular facts and circumstances of a key incentive employee program, Judge Lifland asked whether the program sufficiently answered the following questions in deciding whether it made good business sense to approve it:

First. Is there a reasonable relationship between the plan proposed and the results to be obtained -- i.e., will the employee be properly incentivized? Is the plan calculated to achieve the desired performance?

Second. Is the cost of the plan reasonable in the context of the Debtor’s assets, liabilities and earning

potential?

Third. Is the scope of the plan fair and reasonable? Does it apply to all employees? Does it discriminate unfairly?

Fourth. Is the plan proposal consistent with industry standards?

Five. What were the due diligence efforts of the Debtor in investigating the need for a plan, analyzing which key employees need to be incentivized? What is available? What is generally applicable in the particular industry?

And, last, did the Debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation. Id. It is very much a fact-based inquiry based upon the Debtor's resources, the stage in the case, where the relief is being sought, the nature of the compensation to the executives who would be covered by the plan, how other employees are being treated, the cost of the plan and the like.

Ultimately, I believe that Congress clearly enough set forth the determination to be made by the Court as to whether the plan is, in fact, proper compensation with an incentive element to it. Or, instead, tantamount to improper favoritism to an insider based upon their insider relationship and their being benefitted beyond good business practice merely to report to work. See, for example, again,

In re Residential Capital, LLC, 478 B.R. at 170; In re Hawker Beechcraft, Inc., 479 B.R. 308-313 (Bankr. S.D.N.Y 2012), and In re Velo Holdings, Inc., 472 B.R. 201 at 207. See also In re PG&E Corp., 2019 WL, 468 67 65 at Page 3 (Bankr. N.D. Cal. August 30, 2019)

The Debtor/Movant has the burden of proof to establish both that 503(c)(1) does not apply to the plan and that 503(c)(3)’s facts and circumstances test for an out of the ordinary course action is also satisfied.

I have three objections to the proposed Key Employee Incentive Plan, one of which is a limited objection applying to only the Debtor’s CEO, Dr. Landau. The first objection is by the state of Washington, the second is by the United States Trustee, and the third is by the so-called Nonconsenting States Group, which as a group still acts under common counsel, although it is now made up of states that both consent to confirmation of the plan and those that have objected to the confirmation of the plan.

The motion clearly has a context that could be, in many respects, viewed as law of the case, although they filed their petitions late in 2019 and the metrics for a Kay Employee Incentive Program would generally be set in the early part of the year, i.e., in early 2019. The Debtors in 2019, after their petition date, sought approval of the 2019 program which would largely apply retroactively since by

that point, we were in the fall of 2019. These plans are updated and addressed on a yearly basis to reflect the Debtor's circumstances as they evolve each year and, therefore, in 2020, the Debtors also sought approval of the 2020 KEIP program and did so again in the fall of that year. They have done so again for the 2021 program seeking approval at the end of September, even though the company developed the metrics for the program in early 2021 for 2021 performance.

The program has been modified in light of negotiations with most of the creditor groups in these cases in material ways that are detrimental to the executives covered by the program. First, the Debtors have agreed that the annual award and the long-term award for 2021 will not be subject to acceleration upon the effective date of the Chapter 11 plan. Instead, they have further agreed that the entire 2021 KEIP annual award will be paid on June 30, 2022 as opposed to having a substantial portion of it paid in calendar year 2021, as was the case with the prior awards for the year in which they were earned.

Similarly, the potential claw-back from the 2021 long-term award has been extended through March 15, 2024 if a recipient resigns or is terminated for any reason other than by the Debtors without cause -- roughly, a two-year extension. The Debtors have agreed not to seek to assume

any of the employment contracts of any of the 2021 KEIP participants, therefore, not locking in those contracts as part of the plan process.

And, lastly, Debtors have agreed to consult with the Ad Hoc Committee of States and Other Governmental Entities, the Multistate Governmental Group and the Unsecured Creditors Committee with respect to measuring corporate performance against the 2021 corporate metrics, a function that would normally be performed solely by the Compensation Committee and ultimately the board based on presentations by management as to compliance or performance compliance with the metrics.

And, further, have agreed that those committees will consult with the Debtors in developing performance metrics for calendar year 2022, although the normal time when one would do that in February of 2022 may not come before the effective date of the Chapter 11 plan.

All of those measures, as I said, are to the detriment of the executives in that they delay their payment and make their right to access to the long-term payment subject to a more lengthy claw-back period. The plan amounts are also premised upon the reductions in the prior years' KEIP programs, which aggregate approximately $4.8 million of reductions across the board.

The Court heard testimony by two parties, two

witnesses, rather, in support of the KEIP: Josephine Gartrell and Mr. Lowne, who submitted two declarations in support of the motion. Both of them had also previously testified at the two earlier hearings on the 2019 and 2020 KEIP program, where the United States Trustee made almost exactly the same objection.

Based on my review of that testimony and especially the testimony in the current witness declarations as well as the live testimony today by Ms. Gartrell and Mr. Lowne, it appears to me that the Debtors have carried their burden of proof to show, first, that the proposed KEIP is not the type of retentive bonus program that Congress had in mind in 503(c)(1) and that the KEIP was designed to be consistent with, although provide materially less compensation than, the roughly three decades of compensation history that these Debtors provided to their executives. And, more importantly, was designed to enable these five employees to be compensated on an aggregate basis, including the KEIP, at median compensation rates compared to their company’s competitors or the Debtor’s competitors.

That testimony by Ms. Gartrell was unchallenged and credible. The record is clear that when one looks at the base salary of four of the five people covered by the KEIP, that base salary is well-below, dramatically below in fact, median compensation in the Debtor’s industry.

percent below the 25th percentile.

With the KEIP, if the target metrics are met, the compensation for those four executives, including the fifth one, the company's general counsel, will be at median. The company's general counsel is being paid well in excess of media compensation, but no one has challenged his compensation, and I believe rightly so given the evidence before me and the evidence from the prior hearings in 2019 and 2020, which reflect the fact which is throughout these cases -- I believe an obvious one, that his role as general counsel is far more complex and difficult than general counsel of a competitor in this industry, given the myriad complex legal issues that, as general counsel, he needs to deal with.

These payments, again, if the target is met, will lead to median compensation in the industry. There is no ability under the KEIP to get more than the targeted payment, notwithstanding the fact, as Ms. Gartrell has testified, that it is common practice in the industry to have such an ability going up to payment of 150 percent of the target. Here, the target is the limit and can be reduced based on a right to get some payment between 75 and 100 percent for meeting metrics in part but not in whole, and below the failure to meet the metrics there would be no payment of the KEIP. So, ultimately, what the KEIP enables

is the opportunity to bring aggregate compensation for these five individuals up to the median in their industry.

No doubt my ruling will be construed by some as authorizing large bonuses to executives. I do not believe that that is, in fact, the case here. A bonus is something that you get over and above median compensation. What Congress addressed in 503(c)(1) was, in essence, an unearned bonus for simply staying and working at the company; not something, as is the case here, to bring compensation up to a competitive level if one meets the metrics that are set on a yearly basis or a somewhat lesser amount if those metrics are not completely met up to a 75 percent threshold.

That structure of a KEIP Ms. Gartrell testified to, again without any cross or contravention, is a typical structure in the industry. Indeed, the threshold, according to her testimony, often goes all the way down to 50 percent compensation for lesser performance than the target, as opposed to the higher requirement of the present KEIP which cuts off compensation at the level provided for here.

The state of Washington has objected to the KEIP in a way that has been entirely refuted by Mr. Lowne's second supplemental declaration. The state of Washington contended that Dr. Landau and Mr. Kesselman, the CEO and general counsel, "bear at least some modicum of responsibility for directing the actions and setting the

culture of a company that has caused untold destruction and immiseration. A company that by its own admission engaged in a decades-long series of felonies."

What the state of Washington got wrong and, indeed, its assertion is scurrilous in light of its failure to get it right, is that Mr. Kesselman arrived at Purdue in 2018, well after the conduct that it rightly complains of. Similarly, Dr. Landau became CEO of Purdue in June of 2017, well after the conduct that is the subject or was the subject of a DOJ investigation and the decades of misconduct referred to in the objection. Why would anyone having the role of an attorney general of a state make such allegations is perhaps better left for the voters.

The state of Washington and the United States Trustee also argued, in their pleadings at least, not at the oral argument, that the decision as to the 2021 KEIP should be left to the post-effective date board of these Debtors. We're talking about this year, performance and compensation for 2021, where we're already at September 13th. There will not be a new board for this company in all likelihood until 2022. There is, literally, no way that they should be setting the compensation for 2021.

Indeed, in a recent and cogent article, the deferral of that type of analysis has been highlighted as something that shouldn't be done. Similarly, the Debtors'

waiting to set a KEIP after the petition date as opposed to issuing the payments in 2019 before the petition date is lauded as a best practice in the article. Similarly, the Debtor's agreement not only not to include the KEIP as part of a plan but also to eschew assumption of the employment agreements is lauded as a best practice. Arguments to the contrary are just boneheaded. See Jared A. Ellias, Regulating Bankruptcy Bonuses, 92 Southern California Law Review 653, 695 (March 2019).

What the Debtors have done which is laudable is agreed to include a wide swath of creditor groups in advising their current Compensation Committee and board on compliance with the metrics for 2021 and in helping to set the metrics for 2022.

The U.S. Trustee has also argued that because certain of the metrics are reduced in light of the company's performance, there is something wrong with them. Based on Mr. Lowne's testimony including cross-examination, I conclude to the contrary that the metrics -- the target metrics, that is, were established or recommended by management to the Compensation Committee and established by the board to reflect the current condition of Purdue and, in fact, in some respect, reflect better performance than last year. And in one respect, which covers two categories, reflect understandably worse performance than last year, a

$10 million shortfall as far as the performance target for Adhansia XR net sales, which is also reflected in a roughly $10 million drop in the performance target for consolidated total business operating profit, as testified by Mr. Lowne; Adhansia being a new product was run out in a COVID environment that made it difficult to actually engage in sales of that non-opioid product.

The declaration and testimony by Mr. Lowne also addressed the U.S. Trustee's assertion that the people and culture metric was vague and difficult to objectively determine without further information. Mr. Lowne detailed numerous additional activities required of the Debtors to prepare for emergence from Chapter 11 that are unique one-year tasks, and also reflected what I believe is a proper focus on establishing and supporting implementation of a diversity, equity and inclusion roadmap through the end of 2021. One would question how one could be more specific on that than as described by Mr. Lowne, including as described in the policies of the U.S. courts and the U.S. Trustee. The objections of the U.S. Trustee therefore are overruled, as are the objections of the state of Washington. That leaves the more limited objection by the Nonconsenting States Group, which again was an objection only to the KEIP for the Debtor's CEO, Dr. Landau.

And before I get to that, I guess I should mention

an objection by both the U.S. Trustee and the State of Washington, although it hardly deserves being addressed. Both of them have contended that because the Debtors implemented and the Court approved a keep for 2019 and a keep for 2021. In essence, that's enough, they shouldn't have to do it, or they shouldn't be allowed to do it for 2021 and presumably thereafter. The reason for that is really not at all articulated.

As I noted, each year is part of the normal compensation for key employees of this company. This company has proposed this type of compensation and will continue to do so. To contend that the annual review of that compensation should simply stop for some reason really makes no sense. It appears to me to the contrary, that the reason the argument is made is simply to inflame people who do not listen to the hearing and to the Court's ruling into thinking that the Debtors are constantly seeking bonuses and piling them on year after year, as opposed to proposing an element of market compensation that puts the senior executives at risk of not being paid at market, and does not pay them above market.

So, again, returning to the last objection, which is the limited one by the Nonconsenting States, in some respects that objection raises important issues. Clearly, and I say this based in part upon the record of the

confirmation hearing that I just conducted, and in part as brought out thoroughly in that record, although I was well aware of it beforehand, given the Court's approval of the Debtors' November 2020 civil and criminal settlement with the United States, that the culture, the corporate culture of Purdue was sick, was in -- simply not the type of corporate culture that a corporation should have.

It is important, obviously, to change that culture, and there is considerable evidence in the record that, in fact, under Dr. Landau's leadership such changes have taken place, including the pre-petition termination of the opioid sales force, the end of detailing, and the like. The Debtors' Board was also substantially changed with the appointment of an independent Special Committee that had extraordinary power, and the appointment post-petition of a monitor.

The Nonconsenting States have argued in their four-page objection that Dr. Landau did not do enough to change the corporate culture. They have not identified what in addition needs to be done. But they have stated, and there is some cogency to this, that Dr. Landau should have at least directed those who were in a position to change the corporate culture as to employees for past alleged misconduct, to do so. The Nonconsenting States have pointed out that Dr. Landau does not appear to have been directly

involved in either determining or recommending to others that they determine whether any current employees should be terminated because of their improper conduct in the period before he became CEO, or even thereafter; although, they have not really identified any improper conduct of any employee that arose thereafter.

The Debtors have quite cogently pointed out that because Dr. Landau was himself named as a defendant in some complaints against Purdue and the Sacklers, pre-petition, albeit that he strongly denies the claims that were asserted against him in that litigation, it would have been improper for him to inject himself into the process of determining who acted properly or improperly at Purdue, who was still an employee there. I agree with that argument. That role really needs to have been assumed by other parties, whether that would be the Special Committee or outside counsel, as opposed to by Dr. Landau.

There is no evidence before me to show that any current employee does deserve to be fired or any evidence that the Debtors have turned a blind eye to any improper past conduct. Indeed, it appears the Debtors have been very attentive and responsive to allegations of specific -- regarding specific current employees' alleged past improper conduct, as well as to any allegations of current improper conduct.

Ultimately, of this record, I do not believe that therefore is sufficient evidence to deny the Debtors' motion as to Dr. Landau. On the other hand, I will note that since the first order granting a keep motion, and this will be the case for this order, I have provided for disgorgement if it turns out later that any recipient of a payment has engaged in misconduct. And the current language was further beefed up in my order approving the KERP motion, and will be in this order as well.

If any party believes that these Debtors are continuing to employee people who should not be employed because of their role in prior misconduct, that issue should be addressed with a proper evidentiary record and not by insinuation or innuendo or request to prove a negative.

It's a serious issue and should be addressed with the seriousness that it warrants, i.e., with a proper and full record, not a four-page objection, and in essence, requests to approve -- I'm sorry, to deny the relief based on the failure to prove a negative.

So, I will grant the motion as it has been revised based on this ruling. And so, the Debtors can email the proposed order to chambers doing that.

MR. HUEBNER: Thank you, Your Honor. I believe that brings us to the last item on the agenda for today.

THE COURT: Right.

MR. HUEBNER: Which I believe is also being handled by Ms. Benedict of our office. If I could ask her to take over the podium, I'd be appreciative.

THE COURT: Okay.

MS. BENEDICT: Thank you, Mr. Huebner. Thank you, Your Honor. Once again, this is Kathryn Benedict, of Davis Polk & Wardwell LLP on behalf the Debtors. Can you hear me?

THE COURT: Yes, I hear you fine.

MS. BENEDICT: Thank you. The last item on the agenda is Ms. Isaacs's motion, and I believe we've seen Ms. Isaacs, so I'd ask her to turn on her video if she'd like to be heard. Thank you. And as Ms. Isaacs is movant, we will turn the podium over to her.

THE COURT: Okay. Good afternoon, Ms. Isaacs. And I can tell you I've reviewed the motion. I've read it and read the Debtors' objection, but I'm happy to hear for you.

MS. ISAACS: Thank you, Your Honor. All right. This is going to be really hard to do, Your Honor, so please bear with me. All right. My name is Ellen Isaacs. I'm here representing my beloved son, Ryan, myself, many unborn fetus's that were born -- never born, due to mothers that were prescribed OxyContin, the over 500,000 who have died, for those that are currently addicted to opioids, to give voice to those who under the Fourteenth Amendment of the

Constitution, have been denied their rights to be heard, for the millions of families, friends, and associates with mental health disorders caused by those suffering substance use disorder, and to give warning and notice to the rest of the world as these proceedings only have standing in the United States of America.

Your Honor, thank you for allowing me to take the Court's time and energy by allowing me to bring forth this motion on behalf of myself and the American people. Although I was never personally notified, I read the Debtors' objection and understand as part of our legal procedures, I can't say that Debtors made a full search and not all the creditors agree. If that were the case, I would not have received a call from my former counsel telling me they liked my motion, the very attorney's office that is representing some of the people's claims. These incongruencies are exactly why I'm here today.

The attorneys are playing games on paper and humans are dying. Mr. Huebner, in a prior motion, talked about howling. I am here for my family and the families across the nation howling. We are outraged, as you have verbally confirmed bankruptcy prior to hear this emergency motion that was previously on the calendar and filed well prior to Confirmation, and reviewing the objection in this matter, it now falls under due process and other relief.

The broken legal justice system is part of the problem contributing to all the death, dismemberment, and personal injury that in the people's nation is now a full-blown mental health pandemic.

The opioid pandemic that was permitted to develop due to Purdue Pharma and the FDAs nonadherence to their responsibilities as business owners and government employees has been ineffectively addressed by the government for more than two decades.

As this case has progressed, I have read, observed, and heard the most outrageous rationalizations, excuses and justifications by most everyone, including my prior counsel, Andrew & Thornton and ASK, LLC, and had many epiphanies. Because of this, here is where I began to follow many of the moving pieces in this case to put my boots on the ground to uncover many truths.

Over the years, I've spoken to many people in recovery, recovery professionals, homeless, afflicted, grieving parents, policy makers, legal professionals, business owners, nonprofits, college students, pharmacists, physicians, medical examiners, law enforcement personnel, press, advocates, activists, and many more in between. For clarification, Your Honor, the Sacklers are Purdue Pharma. The family is the controlling members of Purdue Pharma.

A corporation, a legal entity does not take any

action on its own. A corporation does not create, manufacture, distribute, or sell a product without the individuals to be the decisionmakers. We are in the midst of the largest fraud ever perpetrated in the United States and the world, and I intend to show how this began and still exists today.

Our bankruptcy system is for corporations and individuals that are insolvent. It is not to be utilized by the wealthy for manipulation to be self-serving. Manipulation is highly referred to in the Securities Act in 1933, and the Securities Fraud Enforcement Act of 1988. The Securities Fraud Act was developed due to securities fraud schemes. Here in the 21st century, we now have bankruptcy and corporation fraud that is surfaced behind decades of death, dismemberment, personal injury, pain, and sorrow.

The Webster's Dictionary's definition of manipulation is (1) to manage skillfully and especially with intent to deceive, and (2) the candidates try to manipulate the public. The definition of fraud is wrongful or criminal deception intended to result in financial or personal gain.

The Sackler Family is hiding behind the corporation named Purdue Pharma. The Sacklers have been continually and systematically using the already broken justice system through their attorneys with perpetual manipulation fraud for decades. They've used these tactics

at the minimum since the inception of OxyContin.

I could go back to Purdue's launch of Valium and Librium in the 1960s and all those harmed, but that is not why we're here today. All of the senseless deaths, dismemberment, personal injury, and trauma imposed on the families across the nation were created by the Sacklers' manipulation and fraud towards the U.S. people and the U.S. government.

In October 2020, they admitted defrauding regulators and paying illegal kickback to doctors. The DOJ also reported the Sacklers, "criminal guilty pleas, a federal settlement of more than $8 billion, and a dissolution of a company, and repurposing it assets."

Then we have their admitting to wrongdoing back in 2007 with the misleading labeling in their marketing materials. Back then, according to the Justice Department, "Purdue Pharma pled guilty to violating federal requirements to monitor promotion and sales of OxyContin, and making false claims to Medicare and Medicaid" and "the company, which manufactured millions of OxyContin pills during the height of the opioid pandemic, was accused of marketing and offering kickbacks to doctors in violation of federal statute."

They are guilty. 2007 was the first wave of deception unto the government by the Sacklers following a

spike in opioid related deaths. They got a slap on the wrist and paid a fine. They did a reset and began their marketing antics all over again, and the sales representatives became more aggressive. The Sacklers have one motive, money. They will use any means, including manipulation and fraud to achieve their end goal, which is keeping their wealth intact and creating more wealth.

The blood money of my son, current injury to myself, and millions around the globe with very similar circumstances behind the decades of the Sacklers clear intentions and actions that harm millions. This has all been laid out by the Senate Oversight Committee, the DOJ, the FBI, and multitude of governmental agencies across the nation, and these proceedings because it has been, and continuously profits over the health and safety of the American people. Even the attorneys are putting profits over the health of the families and the grassroots of our communities.

Much of the timeline of the facts have been laid in a plethora of documents filed with this Court. It is all so confusing unless you have your docket numbers, the keywords of exactly what you're looking for. It's very difficult to field through the myriad of discovery. For a layperson who cannot afford an attorney, and not have the knowledge to seek such information, and these proceedings

are not fair and impartial. For those here in the know, I will not waste everyone's time that's here and reverberate the timeline the Sacklers domestic genocide that has taken over 500,000 loving humans from us, with the death toll inflicted climbing.

The Sacklers are not bankrupt, nor is their shield of Purdue Pharma. Purdue Pharma is now selling another habitual extended-release stimulant drug, Adhansia, XR. Let's be fully transparent. This drug is much like methamphetamine, approved for children six and over -- an extended-release stimulant for children.

They also purchased a $6.8 million office building in West Palm Beach, Florida. I have many more examples of how the Sacklers or the shield of Purdue Pharma are not insolvent. They are operating just fine and are fraudulently abusing the legal justice system and costing our government endless amounts of money to hold these proceedings.

The Sacklers, by way of their attorneys, who are trained find loopholes in our legal justice system, are continuing to systematically manipulate the bankruptcy laws and Your Honor to evade justice and protect their own money, alongside shielding more than 1,000-plus others they clearly, and on the record, have been in collusion with. The Sacklers are withholding 30 million internal documents

from the public. It's all fraud, and it's been decades of death, dismemberment, and permanent personal injury, physical, and emotional trauma, and a (indiscernible) by the Sackler Family.

How we are all sitting here today with David Sackler threatening this very Court to pull the settlement if the Court does not agree to the family's terms is very alarming. If one person murdered one person, they are looking at life in jail or death row. Here, we are listening to one entire family manipulate the legal justice system over and over again with little to no consequences for the public health and safety emergency they created with over 500,000 deaths.

Why? I would argue because they can afford to do so. The laypeople collectively do not have the wealth to go up against Purdue Pharma. I do not have the wealth, but I have the wherewithal, perseverance, and moral compass to stand up for myself and the American people.

It's unconscionable for the governing members of Purdue Pharma, the Sackler Family, to believe that $4.3 billion over nine years is going to be adequate compensation to relieve the pressure valve and the mental health pandemic that is rippling like a pebble in a pond across the entire nation. No one should forget that from 2016 to 2018, the government paid out over $650 billion for services, and

there has been little to no relief with the numbers of deaths and hospital admissions soaring.

This does not include the (indiscernible) financial impact of the mental health services paid by the government for the family members that sought and continue to seek mental health services behind the death, dismemberment, personal injury, and those family members' mental anguish, trying to keep those afflicted alive.

This brings me to millions of people that have viable claims against Purdue Pharma and were not effectively notified. There were millions of OxyContin prescriptions written since the very first prescription and administrations during trial studies. I personally would have never known this lawsuit was going on had I not been on a social networking platform in a bereaved parents' group. This is where the law firm set their traffic on the web, using keywords to send clients to advertising.

(Indiscernible) reports show approximately 21 million to 23 million are currently afflicted with substance use disorder. Many of the 21 million to 23 million afflicted, and many of which are viable claimants, they aren't sitting on social networking seeking comfort from another grieving, nor are they watching television to see infomercials about possible lawsuits when they've been taken. Many are just looking for help to get off of the

poisonous drugs, or out seeking more drugs so they're not physically sick from withdrawal.

In my travels, many have asked how they can participate in this legal action, and it was passed the filing deadline. These people had no idea these proceedings were happening. There were millions of loving humans that have not received their due process to file claims in this very proceeding.

U.S. Attorney of this New York Southern District recently quoted, "the Plan violated the constitutional rights to due process for those with potential opioid claims." Here is where we can get into the constitution.

My son's life has been taken. My life has been forever altered. I do not have the liberty or free rein to do what I want to do with the physical harm inflicted on me by the Sacklers. I spend my days trying to survive and navigating the physicians and the insurance company. My property is all but gone and I cannot get my attorneys to do anything I ask them to do.

Myself and the people of this nation have had no say in these proceedings. As these tedious, time-consuming, keystroke-slamming, paper-shuffling, thumb-drive jamming, mincing words proceedings are going on, the CDC reports approximately 200,000 more loving humans have died from opioid related deaths. Many of these aggrieved families

that had a love one pass on that was precipitated by OxyContin, also should be able to file claims against the Sacklers. There should never be a deadline on protection for taking of a human life financially.

The latest statistics from President Biden of over 93,000 drug-related deaths in 2020, reduces it to a death every five minutes. This number does not include drug-related suicides and murders, nor does this number demonstrate all the drug-related nonfatal overdoses pouring into medical facilities and inundating the healthcare system, or the overdoses that civilians revive people from in their homes and on the streets around the nation daily.

Here is just one example of the severity of the rise in nonfatal overdoses from one medical facility in our nation. Using data from a single emergency department in Richmond, Virginia, researchers compared unintentional nonfatal opioid overdoses between March 1st and June 30th, 2020, with the same time period in 2019. There were more than twice as many visits for nonfatal opioid overdoses in 2020. The number was 227 in 2020, compared with 2019 of 102, despite roughly 10,000 fewer emergency department visits in 2020. Black patients accounted for the highest number of overdoses in both years, and the proportion was 17 percent higher in 2020 than in 2019.

We are all wise to the non-debtor loopholes, Your

Honor, which is why we are in your particular court with you. Your Honor, for this Court to permit such wide-reaching third-party relief is creating a precedent for every big pharma corporation to do the same as the Sacklers, who are manipulating and defrauding our government at the expense of the life, liberty, property, and due process of the American people. It will also permit every single corporation to do the same, anyone will be permitted to tell the corporation, behave unscrupulously, harm the public, and walk away by declaring bankruptcy.

Bankruptcy was never created to protect a corporation or family to keep their wealth over that of a human life. The unraveling of this case and the precedent being set will be an undertaking that will cost our government billions. The cost of appeals will be in the billions for the Sacklers and the claimants, and the only ones that will profit is the attorneys, attorneys that were to represent the people.

How many more claimants beside myself requested their attorneys to file motions that were met with resistance, yet the attorneys was 33 percent of the fund for partaking in this charade. Only 7.5 percent of this settlement is being allocated for the victims. What? And approximately $250 million of that will be paid to the claimants' attorneys, leaving only $500 million of the $4.3

billion settlement of the 130,000 victims that filed claims. This makes no sense.

The victims are getting the least compensation in this agreement. The claimants' voices were not permitted to be heard in these proceedings, and I have an overwhelming objection -- because the people were not heard, I have an overwhelming objection to the payment to the attorneys.

Your Honor, I have looked into your history on the bench as a bankruptcy judge, and found that you've done a lot of great things over the years. No disrespect, Your Honor, as an outsider looking in, it is very apparent that the Sacklers via their counsel, used you to get to the ends of their means.

It's so sad. I'm sure this is not shocking for anyone to hear as it's been all over the news and the Internet. It's a well-known fact that the Sacklers hand-picked White Plains to file their bankruptcy proceedings because of your well-known history of providing widespread third-party releases. You are the only bankruptcy judge in this District that the Sacklers preyed upon you like they have the American people. They will stop at nothing, not even creating a public health and safety emergency to create and retain their wealth.

Again, no disrespect to you, Your Honor. However, you need to know the facts. I asked my counsel to request

for you to be recused from this case for your protection for a fair and impartial outcome for the people. My attorney's office advised me they would not file the motion because you "are too liked by all of your peers." This statement made me pause and engage with Sean Higgins, the once highly hopeful attorney and in the end of all was no longer exhibiting hope. It was clear, reading between the lines, an exit strategy in these proceedings was underway. The attorneys were not in a financial position to stay in the fight, and now wanted the abatement to start.

Despite it all being unfair and unjust to the victims, I was left scratching my head and wondering, who do the attorneys work for, and does anyone in these proceedings have a moral compass or has everyone got a tie in to save their jobs, companies, or elected seats. I'll show you how in my travels, the Sacklers are terrorists. If this had been a terrorist attack like that of 9/11, the military would be called in.

Here, we have over 500,000 deceased by one family and our government is idly standing by watching the mental health statistics of the American people per the latest (indiscernible) report soared over 52 percent.

The Sacklers are (indiscernible) to a power to because powers and racketeers, they are addicted to money. Their fraud comes in many forms and it's mostly all part of

the record. Lack of due process of the citizens and far-reaching, widespread, third-party releases, extremely disturbing Board Room conversations, hideous emails, texts, and messaging to push OxyContin sales, thwart any wrongdoing, to retain their personal wealth.

Then we have deception in these proceedings by (indiscernible) Perkin, ASK, LLC, prompting the claimants to vote in favor of the Bankruptcy Plan with no explanation. My ballot came through that said that I wanted to vote yes. That's coercion.

The filing of the affidavit for the Court that depicts this unscrupulous act by Prime Clerk and it was never addressed. The Attorney General's filing suit against Purdue Pharma and then reversing course under duress by the Sacklers and their attorneys despite this case having the most overwhelming amount of hours of discovery, interrogatories, depositions, filthy pleas, and the DOJ evidence of fraud. There are conditions in the Settlement Agreement that prohibit funds for those government entities that did not agree to the Settlement Agreement, and that is coercion.

Although Kathe Sackler would like to confuse the Court by reminding everyone on camera, the company pled guilty, and not the individuals. I would like to remind this Court that the Sacklers are Purdue Pharma. They are

one in the same. The corporation is a piece of paper. The corporation does not have hundreds of investors to attack. It is one family, and one family alone. And it has had controlling interest, deceived the public and our government to create a mental health crisis of pandemic proportions. They were the decisionmakers that created the wave of death, dismemberment, and personal injury, and mental anguish to millions.

Here is the most egregious fact. The real part is the Sacklers are not giving up anything to the American people. They have used smoke and mirrors to fool our government and American people for decades.

Please follow along, Your Honor. In 2018, it was reported that Purdue Pharma's net profits since the inception of OxyContin was $31 billion. In 2019, one year later, Purdue Pharma's net profits increased to $36 billion, a $5 billion increase in profits in that one year. In that same year of record, the Sacklers were aggressively moving money around to off-shore accounts, and there are accounts still unaccounted for in excess of $4.3 billion.

The Sacklers' wealth is shielded in a web of companies and trusts, some registered off-shore tax havens. In one example, the Board instructed that the money pass through three layers of holding companies and split equally between (indiscernible) Company and Rosebay Medical Company,

the other ultimate parent company of Purdue. Both are controlled by Sackler Trusts.

An examination of Sacklers' web shows striking complexity and desire for secrecy while pursuing lengths between (indiscernible) Holdings. The family has worked with (indiscernible) to move money out of Purdue to insulate their fortune.

The fact remains, the money they're reported to be paying is coming from the parties that paid for their prescriptions to start with, the victims, the insurance companies, Medicare, and Medicaid. It's not their money.

Then to add insult to injury, they wish to deceive the American people with two heart-wrenching presents, a cancerous corporation has been determined to have killed over 500,000 loving humans at this juncture, and a nationwide public and health and safety emergency. Note, a corporation is a trigger to every family member or friend that has been -- had a love one pass on or to those afflicted and are in recovery as a result of domestic genocide fueled by the Sacklers.

Also, analysts have calculated the Sacklers' $11 billion disclosed wealth they should be walking away with has the potential to earn $4.3 billion, they're offering in exchange for any future liability of Purdue Pharma or the Sacklers personally by 2024.

I'd like to go back a moment to the public corporation. Why would I or anyone else ever agree to taking this corporation is beyond comprehension? To hear the revenue of the corporation, including OxyContin sales, is going to be used to rehabilitate the communities and mitigation the opioid epidemic is absolutely startling. The mere suggestion to the public, but really the government will run the entity, will be selling deadly opioids and benzodiazepines that are causing death, dismemberment, personal injury, mental, and physical disease to our citizens, and ripping families apart, virtually causing everyone harm, and then turn around and use the revenues obtained as the citizens continue to be harmed, and then try to rehabilitate them. This makes absolutely no sense. There isn't more illogical.

To expand on how illogical it all is, the FBI will be in control of the public corporation. The FBI, who has investigated the Sacklers for criminal misconduct in deceptive opioid marketing and sales, will be the nation's new drug dealer.

The Sacklers are also Purdue Pharma -- or Mundipharma of Frankfurt, Germany. And as of May 2021, has a presence in over 120 countries, along with a multitude of corporations the Sacklers own. They have layered these companies and moved money around between the companies,

confusing investigations to shield their wealth. Why the UN is not involved is baffling. Why a world court is not overseeing this case is also baffling.

The Sacklers have invited a worldwide investigation into the domestic genocide by their own unscrupulous actions. In 1991, the Sacklers claimed to be "pioneering developing medications for reducing pain, a principal cause of human suffering." That is the furthest statement from the truth. The truth is, they were and continue to be the pioneers of creating the worst public health and safety emergency in American history. The human suffering they created, will carry forward into generations to come with all the grieving family members and insurmountable amount of emotional and physical pain.

Then there are the parentless children. What about the children? Like many of the children that are victims, my granddaughter will never know her father. Her mental health is at risk and she's predisposed for substance use disorder. The irreparable damage the Sacklers have caused my family and millions of families around the globe is reprehensible.

Your Honor, the temperature is rising and humans with feelings and emotions are getting angrier. It was once said it was hard to navigate the system. I say you can't navigate through a locked channel, or in this case, a broken

system. There are people like Susan Ousterman, who's here, Your Honor, I'd like her to speak after me, myself and more, that care with compassion, empathy, and love, with no financial vested interest in these proceedings, that will continue to help humanity and ensure the next right thing gets done by the people for the people.

The Sacklers continuing systematically undermine the very institution of our Founding Forefathers, and this very Bankruptcy Court to keep the harm from their wealth. Drug dealers do not get to keep their assets. All assets and property are seized and they go directly to jail.

Please refer this case to the Justice Department for criminal prosecution, overrule the corporate and bankruptcy laws, and escalation to a world court to stop the Sacklers from conducting business in the pharmaceutical industry worldwide.

Based on the facts of fraud, I respectfully request on behalf of myself and the American people, that Your Honor reverse course and reconsider the bench ruling for confirmation and enter an order denying this Settlement Agreement in its entirety, along with an order for an immediate investigation by a third-party into the entire bankruptcy proceedings so this never happens again. Then please recuse yourself from this case.

I have a few last things. One, Your Honor, it's

your choice. I believe that you do not want to go home at night worried and saying to yourself, I should have done more, I should have done something differently. Nor do I want this stress of this particular case to make you sick like it has many and many across our nation. Please stand up and make the right decisions and the best intention of not only the people here in the United States, but for everyone around the globe, and the 120 countries that the Sacklers are currently conducting business in under Mundipharma, Mundipharma International, all the corporations the Sacklers own under the guise of trust.

Two, Your Honor, I'm not an attorney. I'm a grieving mother seeking to save humanity from the physical and emotional pain rippling around the globe. I will continue to be here to represent the people unless Alan Dershowitz or Ryan Zant comes out of retirement, or possibly some nonvested person in the outcome alone comes along to represent the people.

Three, you've had many letters submitted to your office by the bereaved family members for your review. And out of the parties involved, I have yet to submit my letter on this matter. And up until the last few months, I still wanted to believe my former attorney had my family's best interests at heart, but it's just false. Everybody's about the money. So, I will share this letter with you now.

Dear Judge Drain, I am the bereaved mother of Patrick "Ryan" Wroblewski. Ryan's happy-go-luck -- Ryan was a happy-go-lucky child with a zest and zeal for life. He had a spirit and energy about him that I had never experienced before. He was smart. He could do a complicated math problem in the millions without a calculator.

He loved to be outdoors at the beach, playing paintball, going on adventures, camping, working, listening to music, playing video games, board games, and playing cards, but most of all enjoying time with his brothers and friends. When he laughed, it was contagious. He was very crafty with his hands and loved being a master carpenter. Very rarely did he need directions to put anything together.

Ryan would light up the room when he walked in. Ryan had a magical charm about him. He was a human being that had real feelings and emotions for others in humanity.

On the flip side to all of his attributes, Ryan experienced a 17-year slow and emotionally and physically painful cancerous death behind OxyContin. In 1999, when Ryan was about 16 years old, he had an injury to his spine. The physicians placed him on OxyContin. Yes, a 16-year-old was prescribed 40 mg of OxyContin every eight hours. As the parent, I was told by the physician this new drug was less harmful than the other drugs on the market and there was to

be less potential for abuse. This was far from true, as we all know. When the physician decided that Ryan no longer needed the medication, he became physically sick and no one could explain how to stop or alleviate the withdrawal symptoms. This was when he began seeking other avenues to obtain OxyContin.

He and a few of his friends that had now also found their way to this drug, began a laborious process of physician shopping to not be sick. They would share their medication between each other and look out for one another.

Ryan went through 17 years of physical and emotional torture. The angst that he internalized was severe. When Ryan became 18, I could no longer help him. The HIPAA laws would not permit me to gain access to his records to get him the help he needed. As a parent, I felt helpless. The government was prohibiting me from helping my child.

By 21, the cravings for OxyContin were so severe that some of his decision-making processes became questionable. The craving for the drug superseded any rational thought because that is what the opiates do to the human brain.

By 24, 25, everything in his world as he knew it spun out of control and he lost nearly everything. He lost his girlfriend of eight years, his housing, his job, and two

of his brothers turned the other cheek, along with nearly the entire extended family. The once family-oriented child told me he felt like an adult child of a single mom. Yet, he physically had a biological father and three brothers. OxyContin tore our family to shreds.

Also, at this time the pill mills spawned and they could all pick a doctor on the same block. Then when the raids came on the pill mills, to not be physically sick, Ryan slowly disintegrated into heroin. During the next 10 years his heroin use became more extensive. I would suggest that he go to treatment, and I was met with resistance. Ryan believed he had to work to sustain a life, and if he was in treatment there would be no income to provide basic essentials. His mind was caught in a trap. Like with OxyContin and all pain medication, the human body builds a tolerance to the medication and the dose needs to be increased to reduce pain or increase euphoria. It also takes away your ability to think clearly. Either way, it's a lose-lose situation because coming off higher doses of pain medication and heroin is much more difficult and dangerous.

He also began to experience weeks of homelessness as he became a recluse out of shame and stigma. One of his dear friends told me that Ryan told him, "I am a huge disappointment to my mother." No, the government is a huge

disappointment to me. The very people that are supposed to protect and serve the people, the Sacklers, and the physicians, the pharmacists, killed Ryan.

In those 10 years, no matter what was going on with him, Ryan always showed up for me and wanted nothing more than to have a cohesive family unit with his brothers.

He has also had a lot of emotional ups and downs behind his feelings and yearning for the family unit. He would describe the feelings of abandonment, worthlessness, unloved, disrespected, mistreated, inferior, lonely, and so on. One evening he explained to me that when he is on opioids all of his emotions go away and he feels free from society ridiculing him and labeling him.

At the latter part of the 10 years, Ryan called to say he was having a child. The day I got this call, was the happiest I had heard from him since before the physician first prescribed him OxyContin at 16 years old.

Also, during this 10 years, I received a disturbing call from my grandmother, Ryan's great-grandmother. Ryan was on the living room floor curled up in a ball saying he wanted to die and crying. I was devastated for the two of them, and sent in the troops to go get him and bring him to me again. This was one of the many times a core group of us would go get one of the many afflicted. This was one of multiple times it was my son. I am truly

grateful for these persons and they know who they are.

When the Medicated-Assisted Treatment drugs Suboxone and Subutex came out, he thought he had found the answer to not being sick and tapering off of the opioids. No, that was not the answer. Suboxone and Subutex are also being abused by individuals in the grassroots of our communities. These prescribing physicians have taken advantage of what was to be a short-use drug to get people off of the opioids and are also further harming the public for profits and providing these drugs long-term which is adding to the public health and safety emergency. These unscrupulous doctors are taking cash only just like the pill mills did. It's all about the money.

Ryan changed geographic locations and ended up on heroin with methamphetamine. In a panic from the methamphetamine, he returned home and started seeking out help. He would spend night after night outside the local state-funded facility for a bed. He would ask me why do I have to get high each night to get a bed in treatment when I am trying to get off the drugs. None of what was going on at this state-funded facility made any sense. I could not explain to him that they get paid for every intake whether they have a bed or not, and it's all a game of government monopoly. This was his life he was fighting for and I was trying to give him a lot of hope and love.

He eventually heard from another client about the money scheme and decided he was not going back there to be shuffled around so they could get a check at his personal expense. He had integrity.

Then he was approached by a gentleman who says he can get him into treatment. Ryan goes to treatment and there -- while there learns that the fellow was an insurance broker that got paid by someone else to refer him and the center paid for his insurance. I then get another call; he doesn't know what to do. He wants to stay because he believes this is the best chance, he has to get clean, yet is conflicted and wants to leave because he does not want to get in trouble. He decided the benefit of himself getting better over the next few weeks outweighed the risk of getting in trouble and reverting back to a life he no longer wanted to live.

Shortly after Ryan's graduation, the center was shut down. Ryan stayed off opioids for about a year. During this period of time he was gainfully employed, playing cards, video games, enjoying the beach, laughing with his youngest brother and friends. Then he had an epiphany. I already said he was smart. He began recalling the timeline of events that occurred from his childhood in his moment of clarity. Ryan called furious and just know, it took a lot to get him mad. He realized that the

physician that put him on OxyContin when his life -- was when his life went tilt. He was livid.

Ryan wanted to talk about this and offered to take me out to dinner. At dinner, he expressed he could not shake off the internal rage towards the physicians, hospitals, and the government for playing Russian roulette with his life.

Just before our last holidays together, Ryan shocked me. He brought me home to a completely decorated house, inside and out; although, this was Ryan, tender, loving, kind, thoughtful, and caring. However, we did not get through the 2017 holidays without another wave of emotions that turned him back to the drugs.

At this time, Ryan was dealing with the grief of the loss of a friend from a tragic overdose and he had a lot of fear surrounding a loved one. Unfortunately, these personal matters and the holidays without his daughter in his life became really intense and became too much for him to bear. Many things were going on, but the worst thing always nagging at his emotions and heartstrings was the yearning to hear his daughter's voice. She was the motivator and driving force when he started to turn his life around. The more he would try to engage with no positive results, the more upset he would get. Then he wouldn't call because the pain of rejection was too great. The

combination of everything was a perfect storm brewing.

This was also the first time he was shunned by my landlord and requested to leave the property. I was threatened with eviction if he returned. Due to the stigma and fear, the landlord had no compassion and empathy for Ryan. He was once again homeless. In the past he would have a few weeks of homelessness and rebound. This time it went on for months. Once again, he reluctantly turned to the state-funded facility for help. Again, I was sitting with him night after night to keep him safe while he injected, smoked, or snorted drugs to produce a positive drug screen so they could get a check at his personal expense.

It was complete lunacy what I was witnessing at the treatment center and the hospital's facilities. One night he overdosed inside of a hospital's locked-down detox after just being revived from an overdose. They had not done his intake properly and never removed the drugs from him.

Around this time is also when the arrests started. He was trying to get clean, appear in court, and look for a job all at the same time. He became so overwhelmed. The background check continued to prohibit him from his gainful employment, this kept him on the street, he had no transportation to freely get around at his liberty, his

property was all gone except for what he had in his backpack, and he was getting tossed around the government's broken systems penniless.

The Sackler's stripped him of all of his self-worth, his life, liberty, property, and due process.

Over the 17 long years, I spent many hours with Ryan crying in my arms. He would ask me questions like, what is wrong with my brain, why is there no help, why doesn't anyone care, what is wrong with me. He also began to make statements like, I'm going to die before I'm 30, the government doesn't care enough to help someone like me, and when I die, please donate my brain to science. That's all a mother needs to hear.

That last statement threw me into high gear after years of trying to get him help in our local community. The most families across -- like most families across the nation, we could not afford attorneys. Since the local state-funded facility was forced to take court ordered patients, I filed for a Marchman Act on Ryan to get him into treatment by court order.

The order was obtained but the place for him to go to treatment was not around the corner. Just when I thought we had finally got him a bed, and things went awry. The county legal justice system is just as broken as this bankruptcy court and the DOJ.

Before Ryan passed on, we had one last mini-vacation together Labor Day weekend 2018. Ryan was so happy. He was dancing, and for Ryan that was huge. Anyone that knew Ryan, knew he did not dance. He was smiling and laughing for the first time in 10 months. I could see a ray of sunshine in his eyes. I had hope for him. So much so that when he asked me if we could move to another state to be near his brother -- youngest brother and get treatment services there, I agreed.

Although, sadly, we never got there. Ryan went down again, but not before there was one last act of goodwill. You see, the previous day, Ryan took his food and gave it to another family to feed their grandchildren who had no food. He always made sure children and animals had their needs met before that of his own.

At this point, I had lost track of how many times I had received calls about another overdose. However, this time I was in the next room and there was no need for a phone call, just a huge crash against the wall and the floor. And what I witnessed next was the four of the most traumatic experiences of my life. The first being my son's lifeless body on the floor. The second was sitting with him for nine days, hooked up to life support and a plethora of machines and wires. The third was watching the medical staff take him off of life support to move him to hospice.

And the fourth was physically crossing him over myself and tucking him in and kissing him on the forehead to say goodbye for the last time when there was nothing else that the doctors could do.

Ryan didn’t choose to live his life this way. The Sacklers poisoned my son's mind as a child with harmful chemicals that changed the chemistry in his brain. The Sacklers used their marketing team and physicians to administer synthetic heroin to my son. The Sacklers planted the cancerous opioids in my son's body that slowly killed his soul over 17 years.

OxyContin fractured the entire family unit. Everyone in our family is suffering a form of trauma, conscious or unconscious, from the Sacklers' manufacturing and sales of OxyContin and the absence of Ryan's physical presence.

At 33, Ryan's pain and suffering stopped when he took his last breath. The pain and suffering to myself and my family, physically and emotionally, continues daily, in part because we miss Ryan. The largest part is due to our government’s ineffective dealing with the Sacklers and the public health and safety emergency they all created, along with living in the devastation of our communities with little to no resources.

At this point, the effective resources are coming

from the people, for the people. The people are the real humanitarians, cleaning up behind the Sacklers and our government's wave of public devastation.

As I walked out the hospital, I threw my hands in the air and said, enough is enough, and I meant it. And that's why I'm here today, Your Honor.

Your Honor, since your bench ruling, all I hear is the Sacklers really got away with murder. That's what people say when they call me on my phone. The Sacklers really got away with murder. If this is not revoked, yes, indeed, the Sacklers will not only have gotten away with murder, they will continue to murder through Mundipharma, and they will have defrauded the people and American government again.

This is the worst crime against humanity since Adolf Hitler, that is being swept under, aside, and paper-pushing and high paid attorneys. The case is in the wrong court.

Lastly, through all of my travels and speaking to various people and visiting with different organizations and groups and processing the volumes of information, I have hope, the destruction to our families in the grassroots in our communities can be stopped and remedies can begin to heal the nation and the world. Several key activists have solutions that would benefit the families, the Court, the

Justice Department, the Sacklers, and the afflicted, who would like to speak to the Sacklers.

With the new information and perspective, please take the proper legal and humanitarian action now. Please stop the biggest fraud ever perpetrated on the American people.

Your Honor, I didn't do a second letter about myself. That could be just as cumbersome and grossly -- the overdosing and what they did to me in the hospitals, by doctors, that went on -- I could go through all kinds of stories and people that I've seen along my journey, but I would like to please let you listen to Susan Ousterman.

And I want to thank you for your time. And I appreciate everybody for being here. I know this is a very difficult situation for everybody, but we have to do the right thing for our citizens, for the love of the people. This is not about the Sacklers and their wealth. This is about the people getting the help that they need in the grassroots of their communities.

Keeping this corporation going is not helping the people.

THE COURT: Okay.

MS. ISAACS: Your Honor, thank you.

THE COURT: Thank you, Ms. Isaacs. This is actually in a legal setting where I'm dealing with Ms.

Isaacs's motion. So, I'm going to hear from the Debtors and then give you my ruling.

MS. BENEDICT: Thank you, Your Honor. Your Honor, the Debtors will rest on our papers, unless you have any questions for us.

THE COURT: All right. That's fine. All right. I have an -- I mean, the title of the document, an emergency "Request for Immediate Injunction and Hearing for Due Process, Production for Evidentiary Documents and Other Relief." It was filed by Ms. Isaacs in this case shortly before the start of the -- actually, during the Confirmation Hearing of this -- of the -- after the 11th --

MS. ISAACS: No.

THE COURT: -- or shortly before, on August 16th. And I've heard Ms. Isaacs at length at this point. And I would just ask you, ma'am, to listen to me as carefully as I listened to you.

First, it is crystal clear to me and has been since the start of these cases that the products, primarily OxyContin, that these Debtors produced, has caused unimaginable harm to people like yourself, ordinary, good people.

It's also clear to me that from the very start of these cases, everyone in these cases, including the Debtors, was opposed to the Sackler Family. The Sackler Family did

not run these Debtors when they filed, and has nothing to do with these Debtors, other than be a target during these cases.

I have ruled at length, and I will file shortly a modified bench ruling that lays out, I hope, even more clearly my assessment of the Plan in these cases, which was prepared and negotiated to resolve as best as a bankruptcy case can, the civil claims against these Debtors and the very closely related claims against the Sacklers. It was negotiated on one side of the table by states, governmental entities, Indian Tribes, representatives of personal injury claimants, and NAS Babies, and their parents and grandparents, and the Official Unsecured Creditors Committee.

Those negotiations were fierce, both among the creditors and against the Sacklers. They were fierce among the creditors because each creditor believed that its particular group was entitled to most of the value.

I have heard six days of testimony and had two days of oral argument on that Plan, and I've evaluated it very carefully and concluded that although it's not perfect, it is worthy of Confirmation, and I've approved Confirmation.

I want to be clear because you have said today as well as in your pleading, which preceded my ruling, that the

Plan enables the Sacklers to get away with criminal conduct and that this case should be somehow moved to a criminal proceeding. The Plan does not release anyone of any criminal conduct. Throughout these cases and after the Plan's Confirmation, any governmental entity with the criminal power can exercise that power.

What the Plan does is resolve civil claims, claims for money in the way that has been not only extensively negotiated, but I think thoughtfully negotiated, in large measure to try to dedicate the money to abatement. The abatement procedures are intentionally open to people like yourself and other representatives who live this for input as to what works or doesn't work.

Importantly, and this is something only a bankruptcy order can do, the money can be used only for abatement. It can't be spent for some other purpose, which is what happened for example with the cigarette settlements. And equally importantly I think, there's reporting often to the Court about the use of the money for abatement, so that people like yourself can read it and say, well, this doesn't work. For example, you know, the system of treatment isn't working, as you described it. It gives people like yourself that input to try to help people, unfortunately not your son, but like your son, who are still going through that hell.

So, I've heard you and others a lot. Believe me. And I certainly have no love loss for the Sacklers. And I can tell you, that I do not feel manipulated by anyone in these cases, nor do I believe that the attorneys general were manipulated. They're beyond manipulation. Or the Creditors Committee.

We do live under a system of laws in this country. Every person has the right to try to change those laws, but the precedent in the Second Circuit, and the majority of the precedent throughout the country supports this Plan.

I did not become a judge to get things wrong. I've tried as hard as I can throughout my 20-year career to get things right. I could have stayed in private practice and made in one year the amount of money that I made in that 20 years. That's not my -- that's not what I wanted to do. I became a judge to try to get things right, and that's what I've tried to do here.

People are certainly free to disagree with it. But I do urge you to read my ruling and see where a lot of people in this case have tried to do the right thing in a very difficult situation.

So, I'm not going to reconsider my ruling, which I think is the proper context at this point given the evidence that I've heard and the basis for that ruling.

And I wish with all my heart that some of the

value in this case goes to you personally, but more importantly, to help abate the opioid crisis, which is coming not from the government, it's coming from the judicial system. And it's setting a precedent for how the states and the public deal with these settlements from other parties who are being sued around the country for enormous amounts of liability.

So, I thank you for sharing with us what is truly difficult, even after all these years, a difficult account. And I thank you for that.

So, I will ask the Debtors to submit the order denying the motion, which at this point I will treat as a motion for reconsideration.

Thank you, ma'am.

MS. ISAACS: Thank you, Your Honor.

THE COURT: Okay. I think that concludes today's hearing.

MS. BENEDICT: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 2:50 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: September 15, 2021